

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 24, NUMBER 11
FRIDAY, MAY 1, 1998

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on Tuesday, May 12, 1998. See tentative agenda beginning on page 2287 of this Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1997 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number.
Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISBN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 12, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

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

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

GENERAL GOVERNMENT CABINET

State Board of Examiners and Registration of Architects

201 KAR 19:087. Continuing education.

201 KAR 19:095. Professional practice standards; violations, penalties.

**DEPARTMENT OF AGRICULTURE
Division of Regulation and Inspections**

Egg Marketing

302 KAR 10:100. Refrigeration of eggs and temperature requirements.

Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

**Department for Environmental Protection
Division for Air Quality**

Asbestos (Public Hearing in March)

401 KAR 58:001. Definitions and abbreviations of terms used in 401 KAR Chapter 58.

401 KAR 58:005. Accreditation of asbestos professionals.

401 KAR 58:025. National emission standard for asbestos.

General Standards of Performance (Not Amended After Hearing)

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations and source category list.

401 KAR 63:100. General provisions.

401 KAR 63:104. National emission standards for oil-water separators and organic-water separators.

401 KAR 63:541. National emission standards for hazardous air pollutants from secondary lead smelting.

401 KAR 63:560. National emission standards for marine tank vessel loading operations.

401 KAR 63:640. National emission standards for hazardous air pollutants from petroleum refineries.

401 KAR 63:680. National emission standards for hazardous air pollutants from off-site waste and recovery operations.

401 KAR 63:741. National emission standards for aerospace manufacturing and rework facilities.

401 KAR 63:780. National emission standards for shipbuilding and ship repair (surface coating).

401 KAR 63:800. National emission standards for wood furniture manufacturing operations.

401 KAR 63:820. National emission standards for the printing and publishing industry.

401 KAR 63:900. National emission standards for tanks - Level 1.

401 KAR 63:920. National emission standards for containers.

401 KAR 63:940. National emission standards for surface impoundments.

401 KAR 63:960. National emission standards for individual drain systems.

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.

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

Kentucky Parole Board

501 KAR 1:030&E. Determining parole eligibility.

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Division of Adult Institutions

Office of the Secretary

501 KAR 6:020&E. Corrections policies and procedures.
501 KAR 6:080&E. Department of Corrections manuals.

Department of State Police

Sex Offender Registration System

502 KAR 31:010E. Sex Offender Registration System.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement

Division of Motor Carriers

601 KAR 1:005. Safety administrative regulations. (Amended After Hearing)

Administration

601 KAR 2:020E. Drivers' privacy protection. (Deferred from April)

Department of Highways Permits Branch

Right-of-Way

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways. (Amended After Hearing)

EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Board of Education Kentucky Department of Education

Office of Instruction

704 KAR 3:303. Required program of studies. (Amended After Hearing)

WORKFORCE DEVELOPMENT CABINET Department for Employment Services

Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

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

Occupational Safety and Health

803 KAR 2:301. Adoption and extension of established federal standards.
803 KAR 2:320. Air contaminants.
803 KAR 2:500. Maritime employment.

Office of Labor Management Relations and Mediation

Collective Bargaining and Arbitration

803 KAR 3:050. Arbitration.

Department of Workers' Claims

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical Services.
803 KAR 25:101. Provision of workers' compensation rehabilitation services.
803 KAR 25:190. Utilization review and medical bill audit. (Amended After Hearing) (Deferred from April)

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

Assets and Liabilities

806 KAR 6:100&E. Actuarial opinion and memorandum.

Health Insurance Contracts

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

Department of Financial Institutions

Securities

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.
808 KAR 10:020. Capital, records and reporting requirements of broker-dealers.
808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives.
808 KAR 10:040. Dishonest or unethical practice defined.
808 KAR 10:080. Guidelines for issuers.
808 KAR 10:090. Issuer's reports.
808 KAR 10:110. Records of investment advisers.
808 KAR 10:130. Amendments to registration statement.
808 KAR 10:141. Repeal of 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, and 808 KAR 10:270.
808 KAR 10:150. Registration exemptions.
808 KAR 10:160. Definitions.
808 KAR 10:170. Exemption claims from securities registration; form.

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808 KAR 10:200. Investment advisers' minimum liquid capitalization
808 KAR 10:210. Registration exemptions - Federal Regulation D.
808 KAR 10:225. Administrative hearing procedures.
808 KAR 10:240. Registration exemptions - sale of business.
808 KAR 10:260. Examination requirements for individuals advising the public on securities.
808 KAR 10:300. Registration exemptions - pension plans.
808 KAR 10:310. Broker-dealer agent de minimis rules
808 KAR 10:320. Broker-dealer books and records requirements.
808 KAR 10:330. Notice filing requirements for covered advisers.
808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.
808 KAR 10:350. Internet advertising.
808 KAR 10:360. Safe harbor for limited liability company membership interests.
808 KAR 10:370. Securities offered on the internet but not sold in Kentucky.
808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement.
808 KAR 10:390. Confidentially disclosed documents.

Kentucky Racing Commission

Thoroughbred Racing (Deferred from March)

810 KAR 1:018. Medication; testing procedures.
810 KAR 1:026. Racing associations.

Harness Racing (Deferred from March)

811 KAR 1:085. Conduct of racing.
811 KAR 1:220. Harness racing at county fairs.

Department of Housing, Buildings and Construction

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:045E. "Limited" licenses for journeyman HVAC mechanics.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations

Local Health Departments

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments.
902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.
902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.
902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.
902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.
902 KAR 8:100. Disciplinary procedures applicable for local health department employees.
902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.
902 KAR 8:120. Leave provisions applicable to employees of local health departments.
902 KAR 8:130. Participation of local health department employees in political activities.
902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

Office of Inspector General

Health Services and Facilities

902 KAR 20:026. Operations and services; skilled nursing facilities.
902 KAR 20:048. Operations and services; nursing homes.
902 KAR 20:051. Operation and services; intermediate care.
902 KAR 20:180. Psychiatric hospitals; operation and services. (Amended After Hearing)

Division for Public Health Protection and Safety

Milk and Milk Products (Deferred from February)

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 2:015E. Supplemental programs for persons who are aged, blind, or have a disability. (Deferred from March)

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)

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CABINET FOR HEALTH SERVICES Department for Medicaid Services

Medicaid Services

- 907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.
- 907 KAR 1:025E. Payment for nursing facility and intermediate facility for the mentally retarded services.
- 907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility.
- 907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients.
- 907 KAR 1:755E. Preadmission screening and resident review (PASRR) program.

Payment and Services

- 907 KAR 3:030E. Coverage and payments for Impact Plus services. (Deferred from March)
Department of Mental Health and Mental Retardation Services
Division of Mental Retardation

Mental Health

- 908 KAR 2:190. Supported living services. (Public Hearing in March)

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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.

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

April 15, 1998

- (1) **200 KAR 7:011**. Repeal of 200 KAR 7:010.
- (2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 9 a.m. in Room 158, Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body, or association agree, in writing, to be present at the public hearing.
- (b) If 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 the scheduled hearing date, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or comments to the following address: Angela C. Robinson, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services at the above address.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 45A.035, 45A.045 and 56.463.
 - (b) The proposed regulation will repeal 200 KAR 7:010.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 200 KAR 7:010 allows contractors holding contracts with the state, administered by the Division of Engineering, Finance and Administration Cabinet, to substitute securities for the retainage withheld from each periodic payment made to such contractor and retained by the Commonwealth pursuant to the terms of their contracts. The Commonwealth invests the money for the contractor who is entitled to receive all interest income accruing on the securities. Because of the time and expense required by the Division of Engineering to comply with this regulation, with no measurable benefit to the Commonwealth, 200 KAR 7:010 shall be repealed.
 - (d) The benefit expected from this proposed administrative regulation is as follows: Reduced paperwork, time and cost savings.
 - (e) This administrative regulation will be implemented by the Division of Engineering by no longer investing such funds for the benefit of the contractor.

Office of Financial Management and Economic Analysis

March 30, 1998

- (1) Regulation Number and Title: **200 KAR 15:010**. Formula for allocation of private activity bonds.
- (2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate an amendment to the administrative regulation listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998 at 2 p.m. at the Capitol Annex, Room 264, 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. Minimums of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Gordon L. Mullis, Executive Director, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex 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 wish to be informed of the intent of the administrative body to promulgate an administrative regulation governing 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 Office of Financial Management and Economic Analysis at the address listed above.
- (7) Information related to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the allocation of private activity bonds is KRS

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103.286.

(b) The administrative regulation that the Office of Financial Management and Economic Analysis intends to promulgate will amend 200 KAR 15:010, Formula for allocation of private activity bonds. It will change the formula for allocating Kentucky's state ceiling on the issuance of private activity bonds. The following amendments to the regulation are proposed:

1. Section 2 will be amended to reserve 60% of the state ceiling in a state issuer pool until July 1st and the remainder of any unallocated portion of the state ceiling shall revert to the single issuer pool. It will also be amended to reserve 40% of the state ceiling for a local issuer pool until July 1st and the remainder of any unallocated portion of the state ceiling shall revert to the single issuer pool.

2. Section 3 will be amended to change from October 1 to July 1 the date the committee shall not allocate a portion of the state ceiling in an aggregate principal amount greater than 10% of the amount of the local issuer pool.

3. A new Section 5 will be added to establish the criteria for making allocations from the single issuer pool.

4. Section 6 will be amended to allow the Kentucky Private Activity Bond Allocation Committee to meet as necessary instead of quarterly.

5. A new Section 9 will be added to allow a 180 day confirmation period for state issuers after the award of allocation to the filing of a notice of issuance, or December 15, whichever is earlier.

6. Section 13 will be amended to include that state issuers shall not file a notice of intent to issue bonds unless the issuance will be made within the 180 day confirmation period and shall not seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a program.

(c) The necessity and function of the proposed administrative regulation is as follows: 98 RS HB 382 requires immediate implementation of the formula change allocating Kentucky's state ceiling on the issuance of private activity bonds. It is necessary to promulgate this administrative regulation in order to comply with HB 382 which was enacted by the on an Emergency basis by the General Assembly.

(d) The benefits expected from the proposed amendment are: The proposed amendment will allow the allocation of private activity bonds in a manner consistent with KRS 103.286 (98RS HB 382) which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth.

(e) This amended administrative regulation will be implemented as follows: All state bond counsel firms and state agencies which have expressed an interest in Kentucky Private Activity Bond State Ceiling will be provided with the revised procedures to the application process.

KENTUCKY BOARD OF MEDICAL LICENSURE

April 15, 1998

(1) Regulation number and title: **201 KAR 9:320**. Procedures for physician training and/or supervision of noncertified individuals in the use of automatic external defibrillators (AEDs).

(2) The Kentucky Board of Medical Licensure intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

(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 ten (10) days prior to May 22, 1998, the public hearing shall be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Delahanty, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565 and 311.601.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will establish standards for physicians involved in the training or supervision of noncertified individuals utilizing automatic external defibrillators.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 311.595(9), as illustrated by KRS 311.597(4), a physician's practice must conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky. The function of this administrative regulation is to provide consistent and clear guidelines as to the standard of acceptable and prevailing medical practice in regard to physicians involved in the training or supervision of noncertified individuals utilizing automatic external defibrillators.

(d) The benefits expected from the administrative regulation are that it will allow physicians to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky in regard to training and supervision of noncertified individuals utilizing automatic external defibrillators.

(e) The administrative regulation will be implemented as follows: The standards will be implemented as stated as soon as they are effective.

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TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

March 6, 1998

- (1) Regulation Number and Title: **301 KAR 3:022**, Hunting and fishing license fees.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to May 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department 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 150.195 and 98 RS HB 654.
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:022 as follows: It will add \$10 bonus deer permits for archery, zone one, and quota hunts; and will add the \$5 senior citizens/disabled license fee authorized by the 1998 General Assembly.
 - (c) The necessity and function of the proposed administrative regulation is: To add permit fees approved by the Fish and Wildlife Resources Commission or authorized by the General Assembly.
 - (d) The benefits expected from the administrative regulation are allowing hunters to take additional deer; and increasing the amount of federal funding available based on paid license holders.
 - (e) The Administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

DEPARTMENT OF AGRICULTURE

April 3, 1998

- (1) Regulation number and title: **302 KAR 20:040**. Entry into Kentucky.
- (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 Thursday, May 21, 1998, at 1 p.m. at the Department of Agriculture's Conference Room, Capital Plaza Tower, 7th Floor, 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 May 21, 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 entry into Kentucky is KRS 257.030.
 - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is a new administrative regulation. It sets forth the requirements for entry into Kentucky as it relates to equine infectious anemia.
 - (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 prevent the introduction of equine infectious anemia (EIA) into Kentucky.
 - (e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about April 3, 1998, and will be replaced by an ordinary administrative regulation.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality

April 15, 1998

(1) The subject matter of the amendments to the following six administrative regulations is a revision and state implementation plan correction to the definition of volatile organic compound. The division also proposes to revise the definition of fugitive emissions, add the abbreviation "tpy" to all except 401 KAR 65:001, and amend the title to 401 KAR 50:010 for consistency throughout the chapters.

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

401 KAR 51:001. Definitions and abbreviations of terms used in Title 401, Chapter 51.

401 KAR 59:001. Definitions and abbreviations of terms used in Title 401, Chapter 59.

401 KAR 61:001. Definitions and abbreviations of terms used in Title 401, Chapter 61.

401 KAR 63:001. Definitions and abbreviations of terms used in Title 401, Chapter 63.

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.

(2) The Division for Air Quality intends to promulgate amendments to the six administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the amendments to these administrative regulations has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 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: Division for Air Quality, Attention Millie Ellis, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed amendments to the administrative regulations.

(a) The statutory authority for the promulgation of the amendments relating to the definitions and abbreviations is KRS 13A.222(4)(e) and 224.10-100.

(b) The amendments to the administrative regulations that the Division for Air Quality intends to promulgate will revise the definition for VOC in these administrative regulations: 401 KAR 50:010, 401 KAR 51:001, 401 KAR 59:001, 401 KAR 61:001, 401 KAR 63:001, and 401 KAR 65:001. Additional amendments are proposed to revise the definition for fugitive emissions and to add the abbreviation, tpy, to each definitions regulation except 401 KAR 65:001, as well as amending the title to 401 KAR 50:010 for consistency within the regulations.

(c) The necessity and function of the proposed amendments is as follows: 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. These administrative regulations provide for the defining of terms to be used in 401 KAR Chapters 50 through 65. The Division for Air Quality proposes to amend the definitions for volatile organic compound (VOC) and fugitive emissions in order to be compatible with the current federal definitions.

(d) The benefit expected from the amendments is that the definitions for VOC and fugitive emissions will be compatible with the federal definitions and, therefore, approvable by the U.S. Environmental Protection Agency as part of the state implementation plan.

(e) The administrative regulations will be implemented as follows: On and after the effective date of the amendments, the administrative regulations in 401 KAR Chapters 50 through 65 will use the amendments in the definitions regulations as part of its existing regulatory program.

April 15, 1998

(1) **401 KAR 57:005.** General provisions, will upon adoption, amend the existing regulation. The subject matter of this amendment is revisions to the federal general provisions rule for National Emission Standards for Hazardous Air Pollutants (NESHAPs) contained in 40 CFR Part 61, Subpart A. Promulgation of the amended administrative regulation is required in order for the cabinet to retain its delegated authority to enforce the federal NESHAP program in Kentucky.

(2) The Division for Air Quality intends to promulgate an amendment to the existing administrative regulation that will incorporate by reference the federal NESHAP regulation, 40 CFR 61.01 through 61.19 (40 CFR 61, Subpart A), governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention: Hank Wiseman, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 57:005. The amended administrative regulation will incorporate by reference the updated national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The amended administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The expected benefit from this administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of the amended administrative regulation, those sources subject to 40 CFR 61.01 through 61.19 (40 CFR 61, Subpart A) shall comply with the provisions of 401 KAR 57:005, as amended, as part of the existing regulatory program.

April 15, 1998

(1) **401 KAR 57:090**, National emission standards for emissions of radionuclides other than radon from Department of Energy facilities. The subject matter of this new administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR Part 61, Subpart H, which applies to operations at any facility owned or operated by the Department of Energy that emits any radionuclide other than radon-220 and radon-222 into the ambient air, except that it does not apply to disposal at facilities subject to 40 CFR Part 191, Subpart B, or 40 CFR Part 192. Promulgation of the proposed administrative regulation is required in order for the cabinet to retain its delegated authority to enforce the federal NESHAP program in Kentucky.

(2) The Division for Air Quality intends to promulgate a new administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 61.90 through 61.97 (40 CFR 61, Subpart H), governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention: Hank Wiseman, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The expected benefit from this administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.90 through 61.97 (40 CFR 61, Subpart H) shall comply with the provisions of 401 KAR 57:090 as part of the existing regulatory program.

April 15, 1998

(1) **401 KAR 57:190**, National emission standards for radon emissions from Department of Energy facilities. The subject matter of this new administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR Part 61, Subpart Q, which applies to the design and operation of all storage and disposal facilities for radium-containing material (i.e., byproduct material as defined under section 11.e(2) of the Atomic Energy Act of 1954 (as amended)) that are owned or operated by the Department of Energy, and that emit radon-222 into the ambient air. Promulgation of the proposed administrative regulation is required in order for the cabinet to retain its delegated authority to enforce the federal NESHAP program in Kentucky.

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(2) The Division for Air Quality intends to promulgate a new administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 61.190 through 61.193 (40 CFR 61, Subpart Q), governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention: Hank Wiseman, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The expected benefit from this administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.190 through 61.193 (40 CFR 61, Subpart Q) shall comply with the provisions of 401 KAR 57:190 as part of the existing regulatory program.

April 15, 1998

(1) **401 KAR 57:200**, National emission standards for radon emissions from phosphogypsum stacks. The subject matter of this new administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR Part 61, Subpart R, which applies to each owner or operator of a phosphogypsum stack, and to each person who owns, sells, distributes, or otherwise uses any quantity of phosphogypsum which is produced as a result of wet acid phosphorus production or is removed from any existing phosphogypsum stack. Promulgation of the proposed administrative regulation is required in order for the cabinet to retain its delegated authority to enforce the federal NESHAP program in Kentucky.

(2) The Division for Air Quality intends to promulgate a new administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 61.200 through 61.210 (40 CFR 61, Subpart R), governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention: Hank Wiseman, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal

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regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The expected benefit from this administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.200 through 61.210 (40 CFR 61, Subpart R) shall comply with the provisions of 401 KAR 57:200 as part of the existing regulatory program.

April 15, 1998

(1) **401 KAR 57:340**, National emission standards for benzene waste operations. The subject matter of this new administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR Part 61, Subpart FF, which applies to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries, and to hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by such plants. Promulgation of the proposed administrative regulation is required in order for the cabinet to retain its delegated authority to enforce the federal NESHAP program in Kentucky.

(2) The Division for Air Quality intends to promulgate a new administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 61.340 through 61.358 (40 CFR 61, Subpart FF), governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention: Hank Wiseman, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The expected benefit from this administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.340 through 61.358 (40 CFR 61, Subpart FF) shall comply with the provisions of 401 KAR 57:340 as part of the existing regulatory program.

April 15, 1998

(1) **401 KAR 63:105**, Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112(g) and (j). The subject matter of this administrative regulation is the federal rule which details the requirements for making Maximum Achievable Control Technology (MACT) determinations pursuant to either of the following scenarios:

(a) a major source of hazardous air pollutants proposes to construct, reconstruct or modify its facility and the U.S. EPA has not yet issued a MACT standard for the source category;

(b) The U.S. EPA's deadline for developing a MACT standard for a particular source category is more than 18 months passed due. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal rule, and it is also a state responsibility pursuant to its delegated Title V permitting program from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the federal regulation 40 CFR 63.40 through 63.56 (40 CFR 63, Subpart B), in the administrative regulation cited above. For the same reasons discussed in the preamble to the federal rule, the Commonwealth will not implement the portion of the federal regulation which requires MACT determinations for modifications until these determinations are required by the U.S. EPA.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from the proposed administrative regulation is that sources subject to the federal regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.40 through 63.56 (40 CFR 63, Subpart B) shall comply with the provisions of 401 KAR 63:105.

April 15, 1998

(1) **401 KAR 63:131**, National emission standards for hazardous air pollutant emissions: group IV polymers and resins. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) which details operating standards for thermoplastic product process units and polyethylene terephthalate manufacturing facilities. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP rule, and it is part of Kentucky's responsibility pursuant its Title V permitting program which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the federal NESHAP regulation 40 CFR 63.1310 through 63.1335 (40 CFR 63, Subpart JJJ), in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 23, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the proposed administrative regulation is that sources subject to the federal regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.1310 through 63.1335 (40 CFR 63, Subpart JJJ) shall comply with the provisions of 401 KAR 63:131.

April 15, 1998

(1) **401 KAR 63:320**, National perchloroethylene air emission standards for dry cleaning facilities. The subject matter of this administrative regulation is the amendment to the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for dry cleaning facilities as amended in the Federal Register, 61 FR 49265 (September 19, 1996). Upon adoption, Kentucky's dry cleaning administrative regulation, which incorporates the federal rule by reference, will be amended to exactly match the federal rule. The promulgation of the proposed

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administrative regulation is required in order for the Commonwealth to retain the delegated authority to enforce the federal NESHAP rule, and it is part of Kentucky's responsibility pursuant its Title V permitting program which has been delegated from the U.S. Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to incorporate by reference the amendments to 40 CFR 63.320 and 63.322 of the federal NESHAP regulation (40 CFR 63, Subpart M), in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 63:320. The amended administrative regulation will incorporate by reference the updated national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed amendment contains the same provisions as the federal amendment. The Division for Air Quality is proposing this amended administrative regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the proposed administrative regulation is that sources subject to the federal regulation will continue to be able to work with the state rather than the federal government to obtain necessary permits.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.320 through 63.325 (40 CFR 63, Subpart M), as amended, shall comply with the amended provisions of 401 KAR 63:320.

April 15, 1998

(1) **401 KAR 63:480**, National emission standards for hazardous air pollutant emissions: group I polymers and resins. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) which details operating standards for elastomer product process units. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP rule, and it is part of Kentucky's responsibility pursuant its Title V permitting program which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the federal NESHAP regulation 40 CFR 63.480 through 63.506 (40 CFR 63, Subpart U), in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority

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to enforce the provisions of the corresponding federal NESHAP regulation.

(e) The benefit expected from the proposed administrative regulation is that sources subject to the federal regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(f) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.480 through 63.506 (40 CFR 63, Subpart U) shall comply with the provisions of 401 KAR 63:480.

April 15, 1998

(1) **401 KAR 63:840**, National emission standards for hazardous air pollutants for primary aluminum reduction plants, as promulgated in the Federal Register, 62 FR 52407 (October 7, 1997). The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) which details operating standards for new pitch storage tanks, new and existing potlines, paste production plants, and anode bake furnaces associated with primary aluminum production at major sources of hazardous air pollutants. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP rule and it is part of Kentucky's responsibility pursuant its Title V permitting program which has been delegated from the U.S. Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to incorporate by reference the federal NESHAP regulation 40 CFR 63.840 through 63.854 (40 CFR 63, Subpart LL), in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the proposed administrative regulation is that sources subject to the federal regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.840 through 63.854 (40 CFR 63, Subpart LL) shall comply with the provisions of 401 KAR 63:840.

April 15, 1998

(1) **401 KAR 68:010**, General provisions. The subject matter of this administrative regulation is the general provisions for the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the general provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.1 through 68.15 (40 CFR 68, Subpart A) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the same provisions as the general provisions contained in the federal regulation (Subpart A). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.1 through 68.15 (Subpart A) shall comply with the provisions of 401 KAR 68:010.

April 15, 1998

(1) **401 KAR 68:020**, Hazard assessment. The subject matter of this administrative regulation is the preparation of a worst-case release scenario analysis pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the hazard assessment provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.20 through 68.42 (40 CFR 68, Subpart B) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millant, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the hazard assessment provisions pursuant to the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart B). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.20 through 68.42 (Subpart B) shall comply with the provisions of 401 KAR 68:020.

April 15, 1998

(1) **401 KAR 68:048**, Program 2 prevention program. The subject matter of this administrative regulation is Program 2 process requirements pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the Program 2 prevention program provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.48 through 68.60 (40 CFR 68, Subpart C) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27,

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1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the Program 2 process requirements of the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart C). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.48 through 68.60 (Subpart C) shall comply with the provisions of 401 KAR 68:048.

April 15, 1998

(1) **401 KAR 68:065**, Program 3 prevention program. The subject matter of this administrative regulation is Program 3 process requirements pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the Program 3 prevention program provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.65 through 68.87 (40 CFR 68, Subpart D) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the Program 3 process requirements of the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart D). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal

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chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.65 through 68.87 (Subpart D) shall comply with the provisions of 401 KAR 68:065.

April 15, 1998

(1) **401 KAR 68:090**, Emergency response. The subject matter of this administrative regulation is emergency response requirements pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the emergency response provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.90 through 68.95 (40 CFR 68, Subpart E) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the emergency response requirements of the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart E). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.90 through 68.95 (Subpart E) shall comply with the provisions of 401 KAR 68:090.

April 15, 1998

(1) **401 KAR 68:100**, Regulated substances for accidental release prevention. The subject matter of this administrative regulation is the listing of substances under 42 USC 7412(r)(3), (4), and (5); the identification of threshold quantities for these substances; and the process for amending that list, pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the regulated substances provisions of the federal chemical accident prevention provisions contained in 40 CFR 68.100 through 68.130 (40 CFR 68, Subpart F) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the listing of substances under 42 USC 7412(r)(3), (4), and (5); the identification of threshold quantities for these substances; and the process for amending that list, pursuant to the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart F). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.100 through 68.130 (Subpart F) shall comply with the provisions of 401 KAR 68:100.

April 15, 1998

(1) **401 KAR 68:150**, Risk management plan. The subject matter of this administrative regulation is the requirements for submission of a Risk Management Plan (RMP) pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the Risk Management Plan provisions for the federal chemical accident prevention provisions contained in 40 CFR 68.150 through 68.190 (40 CFR 68, Subpart G) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the requirements for submission of a Risk Management Plan (RMP) pursuant to the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart G). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.150 through 68.190 (Subpart G) shall comply with the provisions of 401 KAR 68:150.

April 15, 1998

(1) **401 KAR 68:200**, Recordkeeping. The subject matter of this administrative regulation is the recordkeeping requirements pursuant to the federal program for chemical accident prevention and risk management. The promulgation of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal program. Program delegation as it applies to major sources of hazardous air pollutants is part of Kentucky's responsibility pursuant its Title V permitting program, which has been delegated from the U.S. EPA.

(2) The Division for Air Quality intends to incorporate by reference the recordkeeping provisions for the federal chemical accident

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prevention provisions contained in 40 CFR 68.200 through 68.220 (40 CFR 68, Subpart H) in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 27, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. The new administrative regulation will incorporate by reference the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(r) mandates the U.S. EPA to promulgate regulations and programs to prevent accidental chemical releases and to minimize the consequences of any such releases. The proposed administrative regulation contains the recordkeeping requirements pursuant to the federal program for chemical accident prevention and risk management. It contains the same provisions as the federal regulation (Subpart H). The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that the Commonwealth will have the authority to enforce the federal chemical accident prevention program. This will facilitate the efforts of sources subject to the provisions of the federal rule as they will be able to work with the state rather than U.S. EPA in developing their programs.

(e) On and after the effective date of this administrative regulation, those sources subject to 40 CFR 68.200 through 68.220 (Subpart H) shall comply with the provisions of 401 KAR 68:200.

JUSTICE CABINET Department of Corrections

April 13, 1998

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 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 May 21, 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 6:040, as follows:

1. Inmate records (KSP 06-01-01) shall be amended for reference KRS 61.870 - 61.884.

2. General guidelines and functions of the classification committee (KSP 18-01-01) shall be amended to clarify the classification appeals process.

3. Classification document (KSP 18-06-01) shall be amended to delete reference to Corrections Policy and Procedure 18.6.

4. Protective custody unit (KSP 18-15-01) shall be amended to comply with Corrections Policy and Procedure 18.15.

5. Inmate work programs and safety inspections of inmate work locations (KSP 19-04-01) shall be amended to ensure compliance with American Correctional Association Standards regarding institutional inspections.

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6. Unit classification committee - inmate work assignments (KSP 19-04-02) shall be amended to reflect actual practice regarding appeal of classification decision.

7. Arts and crafts program (KSP 22-04-01) shall be amended to prohibit the purchase of arts and crafts by staff.

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

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

2. This administrative regulation updates operating procedures at the Kentucky State Penitentiary to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

April 13, 1998

(1) Regulation Number and Title: **501 KAR 6:110, Roederer Correctional Complex.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 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 May 21, 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 6:110, as follows:

1. Fiscal management: accounting procedures (RCC 02-01-02) shall be amended to reflect a name change in the Finance and Administrative Cabinet and other grammatical corrections.

2. Fiscal management: agency funds (RCC 02-01-03) shall be amended to reflect a name change in the Finance and Administrative Cabinet, deletion of information contained in Statute, and grammatical corrections.

3. Fiscal management: insurance (RCC 02-01-04) shall be amended to reflect changes in the insurance coverage policy and grammatical corrections.

4. Fiscal management: budget (RCC 02-02-01) shall be amended to reflect the new process for preparing the budget in Central Office, the reclassification of the fiscal officer to the fiscal manager, and grammatical corrections.

5. Employee training and development (RCC 04-01-01) shall be amended to reflect changes in responsibilities and grammatical corrections.

6. First aid and CPR training (RCC 04-01-02) shall be amended to reflect grammatical corrections.

7. Access to psychological and psychiatric reports (RCC 06-03-04) shall be deleted as this information is now contained in CPP 6.1.

8. Library services (RCC 21-01-01) shall be amended to reflect new restitution procedures and grammatical corrections.

9. Bed areas (RCC 12-01-02) shall be amended to reflect institutional guidelines regarding cell keys, quiet times, and grammatical corrections.

10. Personal hygiene items: issuance and replacement schedule (RCC 12-03-01) shall be amended to reflect the deletion of some information that is contained in CPP 14.2.

11. Organization of health services (RCC 13-01-01) shall be amended to reflect an addition of an agency phlebotomist and grammatical corrections.

12. Dental procedures and sick call (RCC 13-03-01) shall be amended to reflect the changes in the sick call schedule, emergency situations, and dental screenings.

13. Preliminary health evaluation and establishment of inmate medical records (RCC 13-04-01) shall be amended to reflect that chest x-rays are not given to all inmates and the addition of the confidentiality statement for medical records.

14. Recreation and inmate activities (RCC 22-01-01) shall be amended to reflect the institutional guidelines for inmates participating in community activities and grammatical corrections.

15. Inmate clubs and organizations (RCC 22-03-01) shall be amended to reflect the responsibilities of the club sponsor and the club coordinator, time guidelines for club activities, departmental guidelines, and grammatical corrections.

(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

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by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Roederer Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

TRANSPORTATION CABINET

April 15, 1998

(1) **601 KAR 1:017**, Repeal of 601 KAR 1:015; 601 KAR 1:016; 603 KAR 5:105; 603 KAR 5:110; 603 KAR 5:112; and 603 KAR 5:260.

(2) The Kentucky Transportation Cabinet intends to repeal six administrative regulations as part of the implementation of House Bill 431 passed by the 1998 Regular Session of the General Assembly. House Bill 431 requires that overweight and overdimensional permits be based on dimensions and weights rather than commodity of the nondivisible load to be moved on the state highways. The six administrative regulations to be repealed are all commodity-specific.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998 at 11 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, State Office Building, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the issuance of a single trip or annual permit for the movement of a motor vehicle and its nondivisible, but overweight and/or overdimensional load over the state-maintained highways is KRS 189.270. House Bill 431 repealed KRS 189.273 and 189.274 which were the statutory authority for the promulgation of 601 KAR 1:015 and 601 KAR 1:016, respectively.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will repeal six existing administrative regulations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.273 and 189.274 were repealed in Section 3 of House Bill 431 enacted by the 1998 Regular Session of the General Assembly. 601 KAR 1:015 and 601 KAR 1:016 were promulgated under the authority of these statutes. Therefore, these administrative regulations are repealed. Section 1 of House Bill 431 repealed KRS 189.270(2), (3), (4), (5), (6), and (7). These subsections were the statutory authority for the promulgation of 603 KAR 5:105; 603 KAR 5:110; 603 KAR 5:112; and 603 KAR 5:260. Therefore, these administrative regulations are repealed.

(d) The benefits expected from the administrative regulation are the implementation of HB 431 in a timely manner. The primary benefit of HB 431 will be the removal of the current state laws requiring the issuance of annual permits to be based on commodity transported and replacing with the more equitable issuance of annual permits based on size and weight.

(e) The administrative regulation will be implemented as follows: The basic provisions of the myriad commodity-specific administrative regulations for annual permits which are being repealed will be consolidated into new administrative regulations relating solely to the size and weight of the loaded motor vehicle (See Notice Of Intent to Promulgate Administrative Regulation 603 KAR 5:075).

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 12, 1998.

Department of Vehicle Regulation
Department of Fiscal Management

April 15, 1998

(1) **601 KAR 1:200** relating to the collection, recordkeeping, and audit of the highway use taxes imposed by KRS 138.660.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which amends the existing administrative regulation 601 KAR 1:200 to implement the provisions of House Bill 264 passed by the 1998 General Assembly. In addition, any changes in procedure adopted by the International Fuel Tax Agreement will be examined and adopted if appropriate.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, State Office Building, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 1998, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, Transportation Cabinet, 501 High Street, 10th Floor Code 10-13, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the 601 KAR 1:200, Administration of taxes imposed in KRS 138.655 through 138.7291 is KRS 138.725, 281.600, 49 USC Chapter 317.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 601 KAR 1:200. It will make the following changes in addition to reviewing the entire administrative regulation to assure its continued compliance with the provisions of state law and the International Fuel Tax Agreement:

1. Section 6 will be amended to delete the requirement that all weight distance tax payers provide a bond. Instead, as with the motor fuel taxes collected pursuant to the International Fuel Tax Agreement, a bond will only be required for those licensees who meet 1 of these criteria:

a. The licensee has failed to timely file a report required by Section 7 of this administrative regulation for 3 quarters out of a 4 year period of time;

b. The licensee has failed to remit all of the tax due for a taxable quarter;

c. An audit of the licensee indicates recordkeeping or other administrative problem which makes it difficult for the auditor to determine the amount of tax due for the audited time period; or

d. The licensee has had his license revoked, suspended, or canceled.

2. Section 6(3) will be deleted in its entirety since it will no longer be needed. Section 2 of House Bill 264 amended KRS 138.670 to address the amount of bond.

3. The forms incorporated by reference on which proof of bond is submitted will be revised to reflect the changes in state law and to assure that the provisions of KRS 138.670, including penalty and interest, are accurately reflected on the bond forms.

4. Section 6 will be amended to establish that a motor carrier will no longer be required to file a bond if it has been problem free for at least 4 consecutive quarters.

5. The enforcement time-table for implementing the enhanced penalty set forth in Section 5(4) of House Bill 264 (amendment to KRS 138.715) will be included in the administrative regulation.

6. A mechanism for allowing a carrier to pay its KRS 138.660 taxes by credit card and to file its tax returns electronically as authorized by Sections 3 and 4 of House Bill 264 will be discussed at the public comment hearing.

7. The material from the International Fuel Tax Agreement which is incorporated by reference will be examined and any pertinent changes made in the last 2 years will be incorporated.

8. Portions of the audit procedures and recordkeeping requirements set forth in Sections 8 and 9 will be removed from this administrative regulation and repromulgated as a separate administrative regulation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 49 USC 31705 requires that each state be in conformance with the provisions of the International Fuel Tax Agreement (IFTA) by September 30, 1996. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All 3 of these taxes are administered under the provisions of KRS 138.655 through 138.7291. House Bill 322 passed by the 1996 Regular Session of the General Assembly amended portions of KRS 138.655 through 138.7291 clearly establishing that the tax set forth in KRS 138.6601 (which was in direct conflict with the federal mandate) was repealed and that the motor fuel use taxes imposed by KRS 138.660(1) and (2) were to be applicable to two-axle motor vehicles with a gross weight or registered gross weight above 26,000 pounds. The General Assembly did not address the myriad provisions of IFTA relating to application for license, payment of motor fuel taxes, bond requirements, record retention, auditing of the motor carriers, appeal procedure, and other administrative provisions. During the 1998 Regular Session of the General Assembly House Bill 264 was passed amending KRS 138.665 to making the bonding of motor carriers optional. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is preempted on an interstate basis. This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

(d) The benefits expected from the administrative regulation are compliance with the recently passed House Bill 264. In addition, the Transportation Cabinet will take this opportunity for a review of IFTA requirements to assure continued compliance with the federal mandate.

(e) The administrative regulation will be implemented as follows: All motor carriers which have not had a problem with the reporting and payment of their taxes will have their current bonds terminated or returned.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 12, 1998.

Department of Fiscal Management

April 15, 1998

(1) **601 KAR 1:201** relating to the recordkeeping and audit of the highway use taxes imposed by KRS 138.660.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation which amends the existing administrative regulation 601 KAR 1:201 to address the recordkeeping and audit portions of the highway use taxes imposed by KRS 138.660.

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These items will be removed from existing administrative regulation 601 KAR 1:200. During the promulgation of the new administrative regulation, all audit and recordkeeping requirements of the International Fuel Tax Agreement will be examined and adopted if appropriate.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: Sandra Pullen Davis, Transportation Cabinet, 501 High Street, 10th Floor Code 10-13, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the recordkeeping and audit functions relating to the administration of taxes imposed in KRS 138.655 through 138.7291 is KRS 138.725, 281.600, 49 USC Chapter 317.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation, 601 KAR 1:201. It will contain the provisions on the records a motor carrier needs to maintain in order to have an audited for its highway use tax reports and payments. These provisions will be consistent with the provisions of Audit Manual of the International Fuel Tax Agreement. The enforcement time-table for implementing the enhanced penalty set forth in Section 5(4) of House Bill 264 (amendment to KRS 138.715) will be included in the administrative regulation if appropriate.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 49 USC 31705 requires that each state be in conformance with the provisions of the International Fuel Tax Agreement (IFTA) by September 30, 1996. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All 3 of these taxes are administered under the provisions of KRS 138.655 through 138.7291. IFTA requires that each jurisdiction audit the motor fuel tax reports from the motor carriers based in that jurisdiction. Therefore, the Kentucky Transportation Cabinet will audit the motor fuel tax records of the Kentucky based motor carriers on behalf of all states. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is preempted on an interstate basis. This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA regarding record retention and audit requirements and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

(d) The benefits expected from the administrative regulation are continued compliance with the federal mandate.

(e) The administrative regulation will be implemented as follows: The Kentucky Transportation Cabinet is responsible for the auditing of the motor fuel tax owed each state by the motor carriers based in Kentucky.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 12, 1998.

April 15, 1998

(1) **603 KAR 4:050** relating to limited supplemental guide signs (more commonly known as "Brown Signs".)

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation to implement House Bill 612 passed by the 1998 General Assembly. This bill set the basic criteria for a business to be eligible for the erection of a limited supplemental guide sign on a fully controlled access highway in Kentucky. This administrative regulation will establish the administrative procedures which must be followed in applying to the Department of Highways for 1 of these signs and in paying for the sign.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1998 at 10:30 a.m. local prevailing time, at 501 High Street, Frankfort, Kentucky 40622. The public comment hearing will be held in Training Rooms A and B on the first floor of the State Office Building which is located at 501 High Street.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 29, 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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(a) The statutory authority for the promulgation of an administrative regulation relating to the limited supplemental guide signs is Section 2(1) of House Bill 612 enacted by the 1998 Regular Session of the General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be new, 603 KAR 4:050. It will establish the standards, procedures, and forms for the making and approval of applications for a limited supplemental guide sign.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Section 2(1) of House Bill 612 enacted by the 1998 Regular Session of the General Assembly requires the Department of Highways by February 1, 1999 to establish standards, procedures, and forms for the making and approval of applications for a limited supplemental guide sign by the promulgation of administrative regulations. This will be accomplished in this administrative regulation.

(d) The benefits expected from the administrative regulation are the uniform implementation of House Bill 612 in a timely manner.

(e) The administrative regulation will be implemented as follows: Adoption of application forms and procedures to be followed. The information will be distributed through the Tourism Development Cabinet, the Kentucky Tourism Council, and local tourism or visitor bureaus. The actual construction and erection of the signs will be done through a Department of Highways price contract for the erection of the large signs on fully controlled access highways.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 19, 1998.

April 15, 1998

(1) **603 KAR 4:055** relating to scenic highways and byways.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation relating to the designation and preservation of scenic highways and byways as is required by Senate Bill 399 enacted by the 1998 Regular Session of the General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1998 at 9:30 a.m. local prevailing time, at 501 High Street, Frankfort, Kentucky 40622. The public comment hearing will be held in Training Rooms A & B on the First Floor of the State Office Building located at 501 High Street.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 29, 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the designation and preservation of scenic highways and byways is Section 3 of Senate Bill 399 enacted by the 1998 Regular Session General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be new, 603 KAR 4:055. It will establish the standards, procedures, and forms for the making and approval of applications for the designation of highways as scenic. It will distinguish between the types of highways which can be called "scenic" since the intrinsic qualities on which the designation "scenic" can be based also include cultural, historical, archaeological, recreational, and natural qualities.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Section 3 of Senate Bill 399 enacted by the 1998 Regular Session of the General Assembly requires the Transportation Cabinet in coordination with the Tourism Cabinet and the Kentucky Heritage Council to promulgate administrative regulations to establish the specific criteria for a road to be designated as a scenic highway or byway; a process for nominating review of a road as a scenic byway or highway; a process for designating a road as a scenic highway or byway; and a process to remove the scenic designation, if necessary. The administrative regulation accomplishes this. Section 4 of Senate Bill 399 requires the Transportation Cabinet to attempt to maintain the character of a state-maintained highway that has been designated a scenic highway. The administrative regulation may explore the ways in which the Transportation Cabinet can accomplish this.

(d) The benefits expected from the administrative regulation are the implementation of a formal scenic highway and byway program for Kentucky. Another benefit expected is tying together of the types of highways with designations other than "Scenic". For example, the heritage trails and natural quality trails which are currently informally designated will be placed under the auspices of this administrative regulation.

(e) The administrative regulation will be implemented as follows: The Transportation Cabinet, Tourism Development Cabinet, and the Heritage Council are all represented on the Transportation Tourism Interagency Committee codified by Senate Bill 123 in the 1998 Regular Session of the General Assembly. The Interagency Committee will be designated as the appropriate entity to work with applicants and to review applications for scenic designations. The Transportation Cabinet will seek public comment at this hearing (May 29, 1998) to determine how the cabinet can best preserve the character of a road designated as scenic while at the same time continuing to provide a safe, efficient, and effective surface transportation system.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 19, 1998.

April 15, 1998

(1) **603 KAR 5:340**, Annual permits for moving an overweight or overdimensional motor vehicle and its nondivisible load; **603 KAR 5:075**, Safety requirements and single trip permit for the transportation of an overweight or overdimensional motor vehicle with a nondivisible load; **603 KAR 5:100**, Permit to move a house or building.

(2) The Kentucky Transportation Cabinet intends to promulgate 1 new and 2 revised administrative regulation to implement the

ADMINISTRATIVE REGISTER - 2312

provisions of House Bill 431 passed by the 1998 Regular Session of the General Assembly. Further, 6 existing administrative regulations will be repealed (See Notice of Intent to Promulgate 601 KAR 1:017). The administrative regulations, like House Bill 431 will be based on dimensions and weights rather than commodity of the nondivisible load to be moved on the state highways.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998 at 11 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the issuance of a single trip or annual permit for the movement of a motor vehicle and its nondivisible, but overweight and/or overdimensional load over the state-maintained highways is KRS 189.270.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:075 and 603 KAR 5:100 and establish new 603 KAR 5:340. The new and amended administrative regulations will establish the procedure and forms for applying for a permit and the conditions which must be met for a permit to be issued. They will establish the safety criteria for operating under the auspices of a permit.

At the public comment hearing, the Transportation Cabinet intends to discuss the concept of issuing a permit to a power unit without regard to the nondivisible commodity being transported. It is anticipated that an annual permit could be issued for a truck tractor which would be allowed to move any nondivisible commodity if the combined weight of the truck tractor, trailer, and load does not exceed 120,000 pounds. The requirement for 6 axles on the combined motor vehicle as well as the preapproved routes would be included in the permit. Other items anticipated to be discussed and included in the administrative regulations are the following:

1. Axle weight limits and/or number of axles required for the issuance of an overweight permit;
2. Definition of "nondivisible" as it is used by the Federal Highway Administration: As used in this part, nondivisible means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:
 - a. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
 - b. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
 - c. Require more than 8 work hours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.
3. How the routing will be accomplished;
4. The need for single trip permit if height is greater than 13'6";
5. Issuance of multistate single trip permits; and
6. Liability of parties involved.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.270 authorizes the Secretary of Transportation Cabinet to issue permits for the movement of motor vehicles with loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements necessary in the interest of highway safety for the issuance of an overweight or overdimensional permit which is not specifically addressed in another administrative regulation. It further exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements for the movement of these overdimensional vehicles.

(d) The benefits expected from the administrative regulation are the implementation of HB 431 in a timely manner. The primary benefit of HB 431 will be the removal of the current state laws requiring the issuance of annual permits to be based on commodity transported and replacing with the more equitable issuance of annual permits based on size and weight.

(e) The administrative regulation will be implemented as follows: The basic provisions of the myriad commodity-specific administrative regulations for annual permits will be consolidated into a new administrative regulation relating solely to the size and weight of the loaded motor vehicle.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 12, 1998.

April 15, 1998

(1) **603 KAR 5:315**, Diversion of commercial and recreational motor vehicles from I-75, I-71, and I-471 in northern Kentucky.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation requiring that commercial and recreational motor vehicles which do not have a specific destination within the I-275 circle in either Kentucky or Ohio use I-275 rather than I-71, I-75, or I-471 for approximately the next 2 years. The Transportation Cabinet will repeal this administrative regulation as soon as the construction projects which have necessitated the diversion have been completed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 28, 1998 at 6:30 p.m. local prevailing time, Council Chambers on the first floor of the City Building at 638 Madison Street in Covington, Kentucky (use entrance on 7th Street).

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

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 28, 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the diversion of commercial or recreational motor vehicles is KRSA 189.231.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will be new, 603 KAR 5:315. It will require that commercial and recreational motor vehicles which do not have a specific destination within the I-275 circle in either Kentucky or Ohio use I-275 rather than I-71, I-75, or I-471 for approximately the next 2 years. The Transportation Cabinet will repeal this administrative regulation as soon as the construction projects which have necessitated the diversion have been completed.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state-maintained highways in a manner as is reasonably necessary to promote the safety and convenience of the traveling public. The purpose of this administrative regulation is to promote public safety by restricting and regulating the use of larger commercial motor vehicles on several portions of interstate highway in Kenton and Campbell Counties while major roadway construction projects are on-going. The governing federal regulation, 23 CFR 658, allows a state to restrict the operation of larger dimensioned motor vehicles in a construction zone of an interstate highway. The Transportation Cabinet shall repeal this administrative regulation when the construction projects which have caused the need for the restrictions have been completed.
- (d) The benefits expected from the administrative regulation are increased highway safety in the construction areas of both northern Kentucky and southern Ohio. Traffic congestion should be reduced in and around the construction areas.
- (e) The administrative regulation will be implemented as follows: Signs will be posted in Kentucky and Ohio on I-71, I-75, and I-471 informing the traveling public of the diversion of the large vehicles to I-275. Trucking newsletters and magazines and the American Automobile Association are being notified of the diversion.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than May 19, 1998.

KENTUCKY BOARD OF EDUCATION

April 8, 1998

- (1) **702 KAR 7:065**, Designation of agent to manage high school interscholastic athletics.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 22, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the amendment of an existing administrative regulation relating to the designation of an agent to manage high school interscholastic athletics is KRS 156.070.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 7:065.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to designate an agent for high school athletics and set forth financial planning and review processes for that agent. Also, this administrative regulation adopts the bylaws, procedures, and rules of that agent.
- (d) The benefits expected from this administrative regulation are consistent bylaws, procedures, and rules will be applied to high school athletics.

ADMINISTRATIVE REGISTER - 2314

EDUCATION PROFESSIONAL STANDARDS BOARD

March 1998

- (1) **704 KAR 20:305**, Written examination prerequisites for teacher certification.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. in the Local District Room, First floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
 - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
 - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 22, 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: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the amendment of an administrative regulation relating to a written examination for teacher certification is KRS 161.030. Passing scores for new tests being adopted in for Special Education, English as a second language, Latin are included in this amendment to the regulation. In addition passing scores were established for test in art, music, and French.
 - (b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20: 305, Written examination prerequisites for teacher certification.
 - (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.030 requires that initial certification of all new teachers and the reissuance of expired certificates for persons not completing 2 years of successful teaching experience within the last 10 years shall require the successful completion of appropriate assessments prior to certification. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment.
 - (d) The benefits expected from administrative regulation are: The adoption of assessments for certificates that measure concepts, ideas, and facts that are being taught in teacher preparation programs in Kentucky lead to the certification of qualified teachers.
 - (e) The administrative regulation will be implemented as follows: Written notification of the amendments to this regulation will be given to all Kentucky teacher preparation programs and teacher applicants from the Office of Teacher Education and Certification. The Division of Testing and Internship and Educational Testing Service (ETS), the company which administers the test will conduct three regional seminars for faculty from teacher preparation institutions. In addition ETS will list the new tests as Kentucky requirements in its registration bulletin.

March 1998

- (1) **704 KAR 20:690**, Kentucky Teacher Internship Program.
- (2) The Education Professional Standards Board intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
 - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
 - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 22, 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: Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the amendment of an administrative regulation relating to the Kentucky Teacher Internship Program is KRS 161.030.
 - (b) The administrative regulation that the Education Professional Standards Board intends to amend will:
 1. Clarify that the 1 year internship is based on 70 days of employment in a certified position rather than 70 classroom teaching days;

ADMINISTRATIVE REGISTER - 2315

2. Delete the requirement to hold the orientation meeting within 10 instructional days following the appointment of committee members;
3. Require that all members of the committee shall attend all 4 meetings;
4. Add emphasis on the portfolio and intern reflection;
5. Clarify that the intern is required to complete the internship during the period of the statement of eligibility to be employed as a teacher.

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

(d) The benefits expected from administrative regulation are: The benefits expected from the proposed amendment are that the intern committee members will better understand their role and functions as committee members and the intern will have a better understanding of his or her requirements.

(e) The administrative regulation will be implemented as follows: The program and processes as described in the administrative regulation will form the basis of the training that is required for all intern committee members. "Guiding and Assessing Teacher Effectiveness", which is the handbook for the internship program participants, is provided to all teacher interns and their committee members. This handbook is also available upon request from the Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

MURRAY STATE UNIVERSITY Board of Regents

April 15, 1998

- (1)(a) **772 KAR 1:010** - Acquisition and disbursement of funds, accounting system - records and annual report.
- (b) **772 KAR 1:020** - Delegation of financial management responsibility.
- (c) **772 KAR 1:030** - Annual audit.
- (d) **772 KAR 1:040** - Purchase - inventories - sales of surplus property - capital construction procedures.
- (e) **772 KAR 1:050** - Issuance of bonds.
- (f) **772 KAR 1:060** - Fund for excellence.
- (g) **772 KAR 1:070** - Affiliated corporations.

(2) The Board of Regents of Murray State University intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 22, 1998 at 10 a.m., CDT, at Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P.O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

(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.

(7) Information relating to the proposed administrative regulations:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulations is KRS 164A.560.

(b) The administrative regulations that the Board of Regents of Murray State University intends to promulgate will not amend an existing regulation. They will finalize Murray State University's election allowing it to perform in accordance with KRS 164A.555 to 164A.630 regarding the acquisition of funds, accounting, purchasing, capital construction, and affiliated corporations.

(c) The necessity and function of the proposed administrative regulations is as follows: KRS 164A.560(1) states the governing boards of the postsecondary institutions electing to perform in accordance with KRS 164A.555 to 164A.630 shall do so by regulation.

(d) The benefits expected from the regulations are: to formalize procedures already in place relating to acquisition of funds, accounting, purchasing, and affiliated corporations, in order that Murray State University can maintain promptness, efficiency, and cost effectiveness in these areas. Further, pursuant to the proposed regulations, Murray State University will provide the management and administration of authorized capital construction projects which will be conducted safely and in a prompt, efficient, and cost effective manner.

(e) It presently is anticipated that the proposed regulations will be implemented by the President of Murray State University and/or other appropriate university officials.

ADMINISTRATIVE REGISTER - 2316

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

April 14, 1998

- (1) Regulation number and title: **781 KAR 1:061**, Repeal of 781 KAR 1:060.
- (2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to repeal the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. eastern time, in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601, Phone (502) 564-4440, FAX (502) 564-6745.
- (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 Vocational Rehabilitation at the address listed above.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Department of Vocational Rehabilitation regulations may call toll free 1-800 372-7172 (VTDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.
 - (b) The administrative regulation that the department intends to repeal 781 KAR 1:060, Admission and discharge from community rehabilitation programs is as follows: The criteria for admission and discharge from community rehabilitation programs is no longer necessary.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation established criteria for admission and discharge at work training centers and the Colonial Inn Rehabilitation Facility. Those community rehabilitation programs no longer exist and the requirements are no longer necessary.
 - (d) The benefits expected from administrative regulation are: The regulation is no longer necessary and can be removed.
 - (e) The administrative regulation will be implemented as follows: Staff is aware that the regulation is no longer necessary. There will be no implementation.

Department for the Blind

March 23, 1998

- (1) **782 KAR 1:030**. Scope and nature services.
- (2) The Kentucky Department for the Blind intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998 at 10 a.m. at the Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 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: Jeanne Pherson, Department for the Blind, Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department for the Blind at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the participation of the individual in the cost of services for the Department for the Blind is KRS 163.470.
 - (b) The administrative regulation that the Kentucky Department for the Blind intends to promulgate will amend 782 KAR 1:030 as follows:
 1. Section 1, Assessment. Delete existing text which limits eligibility, and replace with the following text: "For the purposes of determining eligibility, assessment may include, but is not limited to:
 - (a) self-report;

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- (b) existing data from qualified professionals; or
- (c) new reports or measures, as deemed necessary by the rehabilitation specialist."

2. Section 2. Vocational Goal: Addition of the definition listed in the Rehabilitation Act Amendments of 1992 to read as follows: "Is consistent with an individual's strengths, resources, priorities, concerns, abilities, interests and informed choice."

3. Section 12. Self-employment. Clarification of restrictions for the department's financial participation to read: "Exceptions can be made by the director of client services, when documentation exists that the eligible individual will be unable to reach their vocational goal without additional funds."

- 4. The proposed amendment will make some technical revisions.

(c) The necessity, function, and conformity of the proposed administrative regulation is to assure consistency with its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended.

(d) The benefit expected from this amended administrative regulation is to conform agency procedures with federal law.

(e) The administrative regulation will be implemented by agency staff responsible for direct vocational rehabilitation service delivery.

March 23, 1998

- (1) **782 KAR 1:040**. Appeal procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 27, 1998 at 10 a.m. at the Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 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: Jeanne Pherson, Department for the Blind, Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.

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

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

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

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

- (7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the appeal procedures for the Department for the Blind is KRS 163.470 and 13B.020.

(b) The administrative regulation that the Kentucky Department for the Blind intends to promulgate, will amend 782 KAR 1:040, Appeal procedures, to conform to the federal Rehabilitation Services Administration's interpretation of the Rehabilitation Act Amendments of 1992.

(c) The necessity, function, and conformity of the proposed administrative regulation, is for a request by any applicant, for review of determinations, will be given a timely consideration.

(d) The benefit expected from this amended administrative regulation, is to comply with Rehabilitation Services Administration requirements, and ensure continued federal funding for Vocational Rehabilitation Services.

(e) The administrative regulation will be implemented as follows: The department will adhere to the prescribed procedures for an administrative review and utilize KRS Chapter 13B hearing procedures.

Kentucky Assistive Technology Loan Corporation

April 14, 1998

- (1) Regulation number and title: **789 KAR 1:010**, General eligibility criteria for assistive technology loans.

(2) The Cabinet for Workforce Development, Kentucky Assistive Technology Loan Corporation intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 22, 1998, at 10 a.m. eastern time, in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601, Phone (502) 564-4440, FAX (502) 564-6745.

- (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 Vocational Rehabilitation at the address listed above.

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(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Kentucky Assistive Technology Loan Corporation regulations may call toll free 1-800 372-7172 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Assistive Technology Loan Corporation is KRS 151B.450 through 151B.475.

(b) The administrative regulation that the Kentucky Assistive Technology Loan Corporation intends to promulgate will establish policies and procedures to administer a program for providing low-interest loans to qualified borrowers with disabilities through qualified lenders for the acquisition of assistive technology as follows: The corporation shall establish criteria for participation as a borrower and as a lender. The corporation shall establish terms and conditions under which loans will be made including setting monetary limits for loans and defining in general terms what assistive technology and services may be included. The corporation shall establish procedures for applications, approvals, denials and appeals.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to enable the Kentucky Assistive Technology Loan Corporation to obtain loans for individuals with disabilities for assistive technology.

(d) The benefits expected from administrative regulation are: Eligible qualified borrowers with disabilities will be able to obtain low-interest loans for needed assistive technology and services on a timely basis. Greater independence and choice will be available to them as a result.

(e) The administrative regulation will be implemented as follows: The Kentucky Assistive Technology Loan Corporation, with staff assistance from the Workforce Development Cabinet, will administer this regulation. An annual report will be produced for the Governor and the Legislative Research Commission.

KENTUCKY LABOR CABINET Office of the Secretary Office of Labor-Management Relations and Medication

March 20, 1998

(1) Regulation and Title: **803 KAR 6:010**. Kentucky Labor Management Grant Program.

(2) The Kentucky Labor Cabinet intend to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, May 28, 1998, at 10 a.m., 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 five persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of five persons, or the administrative body or association, agree in writing to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten days prior to May 28, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing must mailed 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, Annex, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the statutory administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation regarding the subject matter of the Kentucky Labor Management Matching Grant Program is KRS Chapter 13A and 336.165.

(b) The administrative regulation that the Kentucky Labor Cabinet intends to promulgate will amend 803 KAR 6:010, entitled "Kentucky Labor Management Matching Grant Program". The amendments will do the following: add language to ensure that the grant program complies with Title VI (Civil Rights Act) requirements as codified in 42 USC 2000d and KRS 344.015; delete the requirement that grantees be limited to a maximum of five grant projects; delete the requirement that grant organizations secure independent audits of grant funds; delete the requirement that grantees maintain records for three years and substitute requirement that records be maintained until all outstanding questions are resolved; and correct drafting errors.

(c) The necessity and function of the proposed administrative regulation is: The Kentucky Labor Cabinet is required to ensure that all its programs comply with federal and state civil rights laws; otherwise, this agency risks losing federal funding for some of its projects. Furthermore, the Kentucky Labor Cabinet's Labor Management Matching Grant Program application and grant process must be updated to reflect the changing needs of grantees.

(d) The benefits expected from the administrative regulation are: These changes will ensure that the Labor Cabinet is fully in compliance with all federal and state civil rights laws; furthermore, these amendments will better serve grantees as labor-management needs have changed.

(e) The administrative regulation will be implemented as follows: The Kentucky Labor Cabinet's Office of Labor Management Relations and Mediation will notify current and potential grantees of the new requirements and will implement the changes through its grant application process.

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KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

April 13, 1998

(1) Regulation number and title: **803 KAR 25:021**, Individual self-insurers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1998, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 21, 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260 and 342.340.

(b) The administrative regulation that the commissioner intends to promulgate will amend an existing administrative regulation. It will bring the administrative regulation into conformity with the statutory changes made by the extraordinary legislative session of December, 1996, which amended the workers' compensation law.

(c) The necessity and function of the proposed administrative regulation is as follows: The Commissioner of Workers' Compensation has authority to prescribe necessary administrative regulations pursuant to KRS 342.260. The changes made to KRS 342.340 in the extraordinary legislative session of December, 1966, must be addressed in the amendments in the administrative regulation.

(d) The benefits expected from administrative regulation are: The amendments will reflect the changes made to KRS 342.340 and bring the administrative regulation into conformity with that statute.

(e) The administrative regulation will be implemented as follows: Individual self-insurers will be required to follow the requirements in administrative regulation. The department will continue to enforce the requirements for individual self-insurers in the same manner as it is doing presently.

April 13, 1998

(1) Regulation number and title: **803 KAR 25:026**, Group self-insurers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1998, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 21, 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260 and 342.350.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:026. It will bring the administrative regulation into conformity with the statutory changes made by the extraordinary legislative session of December, 1996, on workers' compensation law.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.350(4) states that the commissioner may promulgate administrative regulations to regulate self-insurance groups. The amendments are necessary to bring the administrative

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regulation into conformity with statutes governing group self-insurers.

(d) The benefits expected from administrative regulation are: This administrative regulation will be in conformity with statutory provisions governing group self-insurers.

(e) The administrative regulation will be implemented as follows: Department will continue to require group self-insurers to comply with statutory and regulatory provisions in the same manner as it currently does.

April 13, 1998

(1) Regulation number and title: **803 KAR 25:170**, Filing of claims information in the Department of Workers' Claims.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1998, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 21, 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.038 and 342.039.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:170. It will amend the administrative regulation so the language is consistent with the statute. The time period for filing a report of first injury in KRS 342.038 is one week from notice. The current time period in the administrative regulation for filing the report of first injury electronically is three weeks.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.039 requires the Commissioner of the Department of Workers' Claims to promulgate this administrative regulation which requires insurance carriers to file claim information. KRS 342.038 requires an administrative regulation to set forth a report of first injury within one week of receiving the information. The regulation must be amended to comply with the statute.

(d) The benefits expected from administrative regulation are: The administrative regulation will now be consistent with the statute relating to these filings. The time period for filing a report of first injury will be the same as the statutory requirements.

(e) The administrative regulation will be implemented as follows: The administrative regulation will be implemented in the same way as it is currently. Carriers will be required to comply with the time period found in the statute and regulation.

April 13, 1998

(1) Regulation number and title: **803 KAR 25:240**, Unfair claims settlement practice.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 21, 1998, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to May 21, 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260.

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

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establish a new administrative regulation to set forth activities which will constitute unfair claims settlement practices.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.267 requires the commissioner to fine carriers for unfair claim settlement practices. It is necessary to provide an administrative regulation to set forth activities that constitute unfair claims settlement practices.

(d) The benefits expected from administrative regulation are: Carriers will be fully aware of activities that constitute unfair claims settlement practices. The commissioner will be able to enforce the statutory requirement in KRS 342.267 more effectively and efficiently.

(e) The administrative regulation will be implemented as follows: Carriers will be required to engage in fair claims settlement practices. If a carrier is found to be engaging in unfair claims settlement practices, then the citation and hearing procedure in KRS 342.990 and 803 KAR 25:015 will be followed.

CABINET FOR HEALTH SERVICES Office of Certificate of Need

April 6, 1998

(1) **900 KAR 6:050**, Certificate of need administrative regulation.

(2) The Cabinet for Health Services, Office of Certificate of Need, intends to promulgate an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 29, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st 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 five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 29, 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, 275 East Main Street, 4 West, Phone: (502) 564-7905, Fax: (502) 564-7375.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of is administrative regulation relating the subject matter listed above is found at KRS 216B.040(2)(a) and (3).

(b) The administrative regulation that the Cabinet for Health Services, intends to promulgate concerns the certificate of need process.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 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 regulations necessary to the orderly administration of the certificate of need program.

(d) The benefits expected from the administrative regulation are: Improved efficiency in the administration of the certificate of need process.

(e) The administrative regulation will be implemented as follows: The Office of Certificate of Need will be responsible for the implementation of this administrative regulation.

April 6, 1998

(1) **902 KAR 20:134**, Repeal of 902 KAR 20:135, Certificate of need application fee schedule.

(2) The Cabinet for Health Services, Office of Certificate of Need, intends to repeal the administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed repeal of the administrative regulation has been scheduled for May 29, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st 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 five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 29, 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, 275 East Main Street, 4 West, Phone: (502) 564-7905, Fax: (502) 564-7375.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

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

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

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

(7) Information relating to the proposed repeal of the administrative regulation.

(a) The statutory authority for the repeal of this administrative regulation relating to the subject matter listed above is found at KRS 216B.040(2)(a) and (3).

(b) The administrative regulation that the Cabinet Health Services, Department for Public Health, intends to repeal, concerns the fee schedule for certificate of need applications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 902 20:135 provides a fee schedule for certificate of need applications but is no longer required because 900 KAR 6:020 was established to provide a fee schedule for certificate of need applications and provides the most current fee schedule.

(d) The benefits expected from the administrative regulation are: Improved efficiency in the administration of the certificate of need process.

(e) The administrative regulation will be implemented as follows: The Office of Certificate of Need.

Department for Medicaid Services

April 15, 1998

(1) **907 KAR 1:006**, Coverage for persons eligible for Title XVIII benefits.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 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 May 29, 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 payment of Medicare Part B premiums are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide for payment of Medicare Part B premiums for individuals with income greater than 120% and less than or equal to 135% of the federal poverty level and payment of that part of the Part B which is attributed to home health costs for individuals with income greater than 135% and less than or equal to 175% of the federal poverty level.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the special coverage factors applicable to both categorically needy and medically needy individuals eligible for benefits under Title XVIII, Part A, Hospital Insurance Benefits (HIB); Title XVIII, Part B, Supplementary Medical Insurance (SMI); Title XVIII Qualified Medicare Beneficiaries (QMB); Title XVIII Qualified Disabled Working Individuals (QDWI); Title XVIII Specified Low-Income Medicare Beneficiaries (SLMB) and Title XVIII Qualified Individuals (QI).

(d) The benefits expected from the administrative regulation are: To assure that the affected individuals continue to participate in the Medicare Program.

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

April 15, 1998

(1) **907 KAR 1:011**, Technical eligibility requirements.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29,

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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 May 29, 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Technical eligibility requirements are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid coverage for disabled children who no longer receive supplemental security income due to the change in definition of childhood disability; provide payment of all or part of the Medicare Part B premium for individuals with income greater than 120% and equal to or less than 175% of the federal poverty level; protect Medicaid coverage for persons with hemophilia who lost SSI coverage due to a class action settlement; protect Medicaid coverage for individuals who received payments from a fund established by Susan Walker v. Bayer Corporation; protect Medicaid eligibility for an individual participating in a Managed Behavioral Healthcare Organization who is admitted to a free-standing psychiatric facility; and provide Medicaid eligibility effective July 1, 1998, for eligible children born on or before September 30, 1983, who have not attained the age of nineteen years.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements of the Medicaid Program.

(d) The benefits expected from administrative regulation are: Continued Medicaid coverage for the affected disabled children and continued Medicare coverage for the elderly and disabled adults

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

April 15, 1998

(1) **907 KAR 1:605**, Medicaid procedures for determining initial and continuing eligibility.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 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 May 29, 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid procedures for determining initial and continuing eligibility are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid coverage for eligible disabled children who no longer receive supplemental security income and provide payment of all or part of the Medicare Part B premium

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for individuals with income greater than 120% and less than or equal to 175% of the federal poverty level.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid procedures for determining initial and continuing eligibility.

(d) The benefits expected from administrative regulation are: Continued Medicaid coverage for the affected disabled children and continued Medicare coverage for the elderly and disabled adults.

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

April 15, 1998

(1) **907 KAR 1:640**, Income standards for Medicaid.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 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 May 29, 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 Income standards for Medicaid are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid coverage for eligible disabled children who no longer receive supplemental security income; provide payment of the Part B Medicare premium for individuals with income greater than 120% and equal to or less than 135% of the federal poverty guidelines; provide payment of that portion of the Part B Medicare premium which is attributable to home health costs for individuals with income greater than 135% and less than or equal to 175% of the federal poverty guidelines; protect Medicaid coverage for persons with hemophilia who lost SSI coverage due to a class action settlement; and protect Medicaid coverage for individuals who received payments from a fund established by Susan Walker v. Bayer Corporation.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth income standards for Medicaid.

(d) The benefits expected from administrative regulation are: Continued Medicaid coverage for the affected disabled children and continued Medicare coverage for the elderly and disabled adults.

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

April, 15, 1998

(1) **907 KAR 1:645**, Resource standards for Medicaid.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 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 May 29, 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Resource standards for Medicaid are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid coverage for disabled children who no longer receive supplemental security income; provide payment of all or part of the Medicare Part B premium for individuals with income greater than 120% and less than or equal to 175% of the federal poverty level; and will add provisions for the treatment of income for those individuals included in specified class action lawsuits.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the resource standards for Medicaid.

(d) The benefits expected from administrative regulation are: Continued Medicaid coverage for the affected disabled individuals and continued Medicare coverage for the elderly and disabled.

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

Department for Mental Health and Mental Retardation Services

April 15, 1998

(1) **908 KAR 2:210**, Domestic violence offender treatment certification standards.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1998 at 9 a.m. in the Department for Public Health 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 five members; and
2. A minimum of 5 persons or the administrative body, or association, agrees, 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 prior to May 19, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor) 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 American With Disabilities Act. Persons requesting assistance with Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to domestic violence offender treatment standards is KRS 403.7505. That statute empowers the Cabinet for Health Services to promulgate regulations establishing certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate establishes certification requirements and standards for domestic violence treatment services that are provided to court-referred offenders.

(c) The necessity and function of the administrative regulation is as follows: To establish certification standards for providers of court ordered treatment to perpetrators of domestic violence and program operational standards to assure appropriate treatment of perpetrators.

(d) The benefits expected from this administrative regulation are: To improve the quality and effectiveness of treatment services provided to perpetrators of domestic violence to reduce the risk of continuing domestic violence and potential injury or death of victims.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
12 KAR 4:170E

The requirements relating to maximum chlorine in tobacco fertilizers established by 12 KAR 4:170 cannot be enforced without an adequate supply of sulfate of potash to use in manufacturing tobacco fertilizers. Based upon the most reliable market information, the supply of sulfate of potash will be about twenty (20) percent less in 1998 than in 1997. The scarce supply of sulfate of potash will undoubtedly cause many tobacco growers to use an excess of muriate of potash (the chlorine-containing potash source) to supply the crop's potassium requirement. Excess chlorine in tobacco fertilizer has a severe adverse affect on the odor and burning quality of burley tobacco. Such tobacco is unacceptable to the tobacco industry for manufacturing cigarettes. The tobacco industry wants tobacco in the market to have no more than one (1) percent chlorine content. The effect of excess chlorine will be a severe economic loss to tobacco growers in the form of lower priced tobacco or unacceptable tobacco in the markets this fall, adversely affecting the economy of the state. Research has shown that two and five-tenths (2.5) percent chlorine in tobacco fertilizer will keep the chlorine content of tobacco leaves below one (1) percent and is the basis for the current regulation (12 KAR 4:170), which limits the chlorine to two and five-tenths (2.5) percent in all tobacco fertilizers. To achieve the maximum two and five-tenths (2.5) percent chlorine, manufacturers of tobacco fertilizers limit the amount of muriate of potash in the blended fertilizer to 100 pounds per ton and blend in sulfate of potash to complete the amount of potash needed in the fertilizer. This is equivalent to about fifty (50) pounds of chlorine per ton of blended fertilizer. Rates of application less than one (1) ton per acre results in less than fifty (50) pounds of chlorine per acre. Therefore, if less than one (1) ton per acre is used, the fertilizer can be blended with a higher proportion of muriate of potash and consequently a lower proportion of sulfate of potash. The effect would be to conserve the supply of sulfate of potash and effectively allow the use of more muriate of potash without jeopardizing the quality of cured tobacco this fall. Because of the severe economic loss to tobacco growers in the form of lower priced or unacceptable tobacco in the markets this fall, and the adverse effect on the economy of the state, an emergency administrative regulation is required to permit fertilizer manufacturers to blend tobacco fertilizers in a manner that will prevent the severe economic loss to the state. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because the shortage of sulfate of potash is expected to be temporary.

PAUL E. PATTON, Governor
C. ORAN LITTLE, Director

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station

12 KAR 4:170E. Maximum chlorine guarantees for tobacco fertilizers.

RELATES TO: KRS 250.366(7), 250.411(1)

STATUTORY AUTHORITY: KRS 250.421

EFFECTIVE: April 7, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the Director of the Kentucky Agricultural Experiment Station to enforce the provisions of KRS 250.371 to 250.451 and to promul-

gate and enforce administrative regulations necessary to implement KRS 250.371 to 250.451. This administrative regulation establishes [To prescribe] the specific format and conditions for maximum chlorine guarantees for tobacco fertilizers which is necessary for production of quality tobacco.

Section 1. (1)(a) All fertilizers, except bagged, [bag, bulk, liquid, custom mixes, etc.] sold for or represented for use on field crop tobacco shall [not plant beds, must], in addition to the other guarantees specified by 12 KAR Chapter 4 [administrative regulation], state a maximum chlorine guarantee not to exceed fifty (50) pounds per acre chlorine (equivalent to 100 pounds of muriate of potash per acre) [two and five-tenths (2.5) percent] in the following format:

Chlorine (Cl), Maximum	<u>50 lb./acre</u> <u>[2.5%]</u>
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(2) The maximum chlorine guarantee shall be:

(a) Placed below the guaranteed analysis as required by 12 KAR 4:090; [administrative regulation] and

(b) [shall be] Prominently and conspicuously displayed on the invoice or shipping ticket that accompanies bulk sales.

(3) The invoice or shipping ticket shall state the rate of application expressed in lb./acre of the blended fertilizer.

(4) Bagged tobacco fertilizers shall:

(a) Be exempted from the provisions of this administrative regulation; and

(b) Continue to be guaranteed not to exceed two and five-tenths (2.5) percent chlorine.

(5) The provisions of this administrative regulation shall not apply to fertilizers for use on plant beds.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Council

APPROVED BY AGENCY: April 3, 1998

FILED WITH LRC: April 7, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed emergency administrative regulation is scheduled for May 21, 1998, at 10 a.m., Eastern Daylight Saving Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing must notify the contact person noted below in writing by May 14, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed emergency regulation. A transcript of the hearing will not be made unless a written request for a transcript is made by May 14, 1998. If you do not wish to be heard at the hearing, you may submit written comments on the proposed emergency regulation to the contact person noted below.

CONTACT PERSON: Wilbur W. Frye, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Telephone (606) 257-2827.

REGULATORY IMPACT ANALYSIS

Contact person: Wilbur W. Frye

(1) Type and number of entities affected: About 360 fertilizer manufacturing firms in Kentucky.

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

(a) Cost of living and employment in the geographical area in

which the emergency regulation will be implemented, to the extent available from the public comments received: No effects on cost of living and employment.

(b) Cost of doing business in the geographical area in which the emergency regulation will be implemented, to the extent available from the public comments received: The use of less sulfate of potash will lower the cost to manufacture a ton of tobacco fertilizer; therefore, the cost to the farmer should be less.

(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 appreciable effect on paperwork and reporting (same as ordinary administrative regulation), but the required statement of fertilizer rate will slightly increase the cost of compliance by the manufacturer.

2. Second and subsequent years: Not applicable; temporary need.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal effect; will require an additional step of computerized calculation of chlorine per acre for fertilizer samples testing greater than 2.5% chlorine in the laboratory.

2. Continuing costs on saving: Not applicable.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None expected.

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

(5) Source of revenue to be used for implementation and enforcement of emergency regulation: Agency funds derived largely from existing inspection fees.

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

(a) Geographical area in which emergency regulation will be implemented: Will be implemented statewide.

(b) Kentucky: A survey sampling and analysis of tobacco leaf on the market in central Kentucky in 1996 and 1997 showed that about 12% of the tobacco had a chlorine content greater than 1% (the desired level), and about 3% was greater than 1.75% chlorine (the level considered to be excessive). If tobacco with excessive chlorine increased by 1% (from 3 to 4%) as a result of this emergency, it would mean that an additional 5.5 million pounds of the state's total estimated production 550 million pounds of burley tobacco could be of unacceptable quality for the market this fall. At a market value of \$1.85 per pound, this is a potential loss of about \$10.2 million.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only effective alternative.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

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

(10) TIERING: Is tiering applied: Tiering is applied to the extent that firms who manufacture only bagged tobacco fertilizers are exempted from complying with this emergency regulation but are required to comply with the existing ordinary regulation. The emergency regulation applies equally to all other tobacco fertilizer manufacturers.

STATEMENT OF EMERGENCY 200 KAR 15:010E

98RS HB 382 requires immediate implementation of the formula change allocating Kentucky's state ceiling on the issuance of private activity bonds. This emergency administrative regulation thus changes

the formula for allocating Kentucky's state ceiling on the issuance of private activity bonds; during the first half of the annual bond issuance term, sixty (60) percent shall be reserved for state bond-issuance authorities and forty (40) percent shall be reserved for local bond-issuance authorities. During the second half of the annual bond-issuance term, remaining cap shall be allocated from a single pool. It is necessary to promulgate this emergency administrative regulation in order to comply with HB 382 and to allocate the state ceiling for private activity bonds in calendar year 1998. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 200 KAR 15:010 was filed at the same time as the emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis

200 KAR 15:010E. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.286

STATUTORY AUTHORITY: KRS 103.286(3), 26 USC 146

EFFECTIVE: March 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) provides that the Secretary of the Finance and Administration Cabinet shall promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Affected bonds" means "private activity bonds" as defined by 26 USC sec. 146, excluding any obligations not subject to the state ceiling under the Code;

(2) "Bonds", see KRS 103.200(2);

(3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;

(4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;

(5) "Issued" means delivered and paid for;

(6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;

(7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;

(8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;

(9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet;

(10) "State ceiling" means the cap imposed by 26 USC sec. 146 on private activity bonds issued within the Commonwealth of Kentucky;

(11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;

(12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and

(13) "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds. On January 1st of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools:

(1) Sixty (60) percent of the state ceiling shall be reserved in a state [local] issuer pool until July [October] 1st. On July [October] 1st, the remainder of any unallocated portion of the state ceiling shall revert to the [a] single issuer pool.

(2) Forty (40) percent of the state ceiling shall be reserved for a local [state] issuer pool until July 1st. On July 1st, the remainder of any unallocated portion of the state ceiling shall revert to the single issuer pool.

Section 3. Allocations For Local Projects. Prior to July [October] 1 the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling will be ranked based on evaluation of the factors listed, and allocated according to the rankings; [prior to October 1 shall be evaluated by the committee using the following criteria:]

- (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- (2) Average salary per employee proposed for the project;
- (3) Capital investment in Kentucky being made as a result of the project;
- (4) Unemployment rate in the county of the project;
- (5) State economic development incentives awarded to the company, if any;
- (6) Previous private activity bond cap allocated to the company.

Section 5. Allocation of Single Issuer Pool. Allocations from the single issuer pool shall be made to local projects which have filed a notice of intent to issue but which did not receive an allocation from the local issuer pool, or did not receive the total allocation requested from the local issuer pool, in the order in which they were ranked pursuant to Section 4 of this administrative regulation. No local project shall be allocated a total amount which is greater than ten (10) percent of the local issuer pool. Any funds remaining after allocation to local projects as stated above, shall be allocated by the committee on a first-come first-served basis.

Section 6. Committee Meetings. The committee shall meet as necessary [at least quarterly] to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 7. An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intention to issue bonds ("Notice of Intent" form). [6-Obtaining Confirmations in Advance-notice of Intent. A confirmation authorizing the issuance of affected bonds shall be obtained by the issuer filing with the committee a written notice of intention to issue bonds ("notice of intent" form).] The committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling" form) allocating to the issuer a portion of the state ceiling [equal to the amount of the bonds proposed to be issued]. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 8. [7-] Notice of Issuance; Local Projects; [Original] Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance" form). The notice of issuance may be sent by any means but [it shall be received by] the committee shall receive it by the close of business on the 90th day after the confirmation. If the period ends on a Saturday, Sunday, or other day upon

which state offices are closed for business, the notice period shall be extended to the next business day.

~~[Section 8- Renewal of Confirmation Period. (1) If the bonds are not issued within the ninety (90) day confirmation period, the issuer may seek a renewal of confirmation for all or any part of the project described in the original notice of intent;~~

~~(2) The issuer may seek renewal by filing a new notice of intent;~~

~~(3) The issuer shall wait a period of thirty (30) days after expiration of the original confirmation period before filing the new notice of intent;~~

~~(4) The committee shall review the new notice of intent and may grant a renewal confirmation which shall be valid for a period of thirty (30) days.]~~

Section 9. Notice of Issuance; State Projects; Confirmation Effective for 180 days. A confirmation shall expire 180 calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance" form). The notice of issuance may be sent by any means but the committee shall receive it by the close of business on the 180th day after the confirmation. If the period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day. [Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds by a supplementary confirmation. The supplementary confirmation shall expire on the date of the confirmation that it supplements.]

Section 10. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts less than the confirmed amount; if [provided, that] the face amount of the issued bonds is not less than eighty-five (85) percent of the original confirmed amount. The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent limit and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year.

Section 11. Carry-forward Allocations. (1) In any year, the committee shall allocate any remaining state ceiling as carry-forward allocations if the aggregate amount of private activity bonds issued during the year is less than the state ceiling on December 15th. [If the aggregate amount of private activity bonds issued during the year does not exceed the state ceiling.] An issuer may, in order to receive a carry-forward allocation [to the next year], file with the committee by December 15th [31st];

(a) A "notice of intent" ("Notice of Intent" form); and

(b) A "carry forward election of unused private activity bond volume cap" (U.S. Treasury Department Form 8328).

(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 USC sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward ("Confirmation of Carry Forward Allocation of State Ceiling" form).

(4) The committee may consider, but shall not be required to grant, a carry forward notice or election filed after December 15th [31st].

Section 12. The committee shall not confirm a notice of intent to issue bonds after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 13. Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project shall not:

(a) File a notice of intent to issue bonds unless the issuance will be made within the ninety (90) day confirmation period established in Section 8 [7] of this administrative regulation;

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a project.

(3) An issuer of a state project shall not:

(a) File a notice of intent to issue bonds unless the issuance will be made within the 180 day confirmation period;

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a program.

Section 14. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Notice of Intent" application (March 1998 [July 1996]);

(b) "Confirmation of Allocation of State Ceiling" (March 1998 [September 1995]);

(c) "Confirmation of Carry-forward Allocation of State Ceiling" (March 1998 [September 1995]);

(d) "Notice of Issuance" (March 1998 [September 1995]); and

(e) "U.S. Treasury Department Form 8328".

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN P. MCCARTY, Secretary
KAREN POWELL, Attorney

REGULATORY IMPACT ANALYSIS

Contact Person: Kimberly Link

(1) Type and number of entities affected: The Kentucky Housing Corporation, the Kentucky Higher Education Student Loan Corporation, the Kentucky Infrastructure Authority, the State Property and Buildings Commission and local bond issuing entities in all 120 Kentucky counties.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living and employment in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state. It would be impossible to predict the redistribution.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state. It would be impossible to predict the redistribution.

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

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

1. First year following implementation: Pursuant to KRS 103.286 as amended by 98RS HB 382, 60% of the state ceiling on private activity bonds shall be reserved for state bond-issuance authorities until July 1st. 40% of the state ceiling on private activity bonds shall be reserved for a local issuer pool until July 1st. After July 1st, allocations from the single issuer pool shall be made to local projects which have filed a notice of intent to issue but which have not received an allocation from the local issuer pool, or did not receive the total allocation requested from the local issuer pool, in the order in which they were evaluated. No local project shall be allocated a total amount which is greater than 10 percent of the local issuer pool. Any funds remaining after allocation to local projects as stated above, shall be allocated by the committee on a first-come first-serve basis. In addition, confirmation for state projects is 180 days from the date of issuance by the Committee or December 15, whichever is earlier. A state issuer may not file a notice of intent to issue bonds unless the issuance will be made within the 180 day confirmation period or seek allocation of the state ceiling in excess of the amount necessary to finance all costs of 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: There are no direct or indirect costs or savings to the promulgating administrative body.

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: More volume cap will be available to the Kentucky Housing Corporation and Kentucky Higher Education Student Loan Corporation thus providing low interest loans to the citizens of Kentucky.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary.

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

(a) Geographical area in which administrative regulation will be implemented: Statewide. The 10% limitation imposed on local projects could possibly result in more job creation because more projects can receive private activity bond cap. The 60% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents, and will provide the Kentucky Higher Education Student Loan Corporation with continuing and reliable student loan revenue bond resources needed to provide additional student loans for Kentucky students.

(b) Kentucky: The 10% limitation imposed on local projects could possibly result in more job creation because more projects will receive private activity bond cap. The 60% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents, and will provide the Kentucky Higher Education Student Loan Corporation with continuing and reliable student loan revenue bond resources needed to provide additional student loans for Kentucky students.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered. This amendment to the administrative regulation is necessary in order to be in compliance with 98RS HB 382.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: There are no effects on the public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that established criteria are used to evaluate local projects but no criteria is established to evaluate state projects. Also, there is a 10% limitation on local projects with no such limitation on state programs. This administrative regulation also establishes a 60% set aside of the state ceiling for state issuers and a 40% set aside of the state ceiling for local issuers.

STATEMENT OF EMERGENCY 302 KAR 20:040E

This emergency administrative regulation allows for the movement of horses and other equidae from an out-of-state approved horse sales into Kentucky and requires those animals to be tested for equine infectious anemia. This disease is a threat to the state's equine industry. This administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1, inasmuch as this disease is a threat to the welfare of the entire equine industry of the state. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE Division of Animal Health

302 KAR 20:040E. Entry into Kentucky.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: April 3, 1998

NECESSITY, FUNCTION, AND CONFORMITY: To establish health requirements for entry, including sales or exhibition, for livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals shall be accompanied by a certificate of veterinary inspection unless otherwise provided in this administrative regulation.

(2)(a) A permit may be obtained by calling (502) 564-3956, Monday through Friday, 8 a.m. through 4:30 p.m.

(b) Requests for permits made after 4:30 p.m., Monday through Friday, and on weekends and holidays shall be telephonically recorded.

(c) Permits requested pursuant to paragraph (b) of this subsection shall not be issued for certain species designated by the chief livestock health official.

(d) Permit numbers obtained pursuant to this subsection shall be recorded on the certificate of veterinary inspection.

(3) All required testing shall be conducted by a state-federal approved laboratory.

(4) Certificate of Veterinary Inspection shall be void thirty (30) days after date of issuance for entry into Kentucky, except as noted.

Section 2. Cattle. (1) General requirements.

(a) A permit shall be required prior to entry for all cattle except steers and spayed heifers. Permit number shall be recorded on Certificate of Veterinary Inspection.

(b) Cattle moving directly from a farm of origin may enter an approved state-federal livestock market in Kentucky without a permit or Certificate of Veterinary Inspection as described in 302 KAR 20:070.

(c) If animals are from a tuberculosis accredited or a brucellosis certified herd, Certificate of Veterinary Inspection shall show herd accreditation and herd certification number with date of last herd test for tuberculosis and brucellosis.

(2) Specific diseases.

(a) Brucellosis. Import requirements for cattle originating in Class "A" or Class "Free" states or areas:

1. Sexually intact bovines twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry unless the cattle:

a. Originate directly from a brucellosis certified free herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age;

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age; or

d. Are open heifers less than eighteen (18) months of age designated for feeding purposes.

2. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation.

3. Heavy springers and cows postpartum shall be test eligible regardless of age.

4. Heifers for exhibition in carcass classes shall be officially identified but shall not be required to be brucellosis tested if accompanied by a certificate of veterinary inspection.

5. Bison shall meet the same requirements as cattle.

(b) Tuberculosis.

1. Cattle six (6) months of age or older for dairy, breeding or exhibition purposes shall be negative to an official tuberculin test within sixty (60) days prior to date of entry, unless exempted by one (1) of the following:

a. The cattle originate directly from a tuberculosis accredited free herd; or

b. The cattle originate directly from a tuberculosis eradicated free state; or

c. Unweaned nursing calves accompanied by their dam shall be officially identified but shall not be required to be tuberculosis tested unless they are offered for sale individually.

2. Cattle classified as suspects or cattle originating from a quarantined herd shall not be imported.

3. Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

4. Bison six (6) months of age or older shall be negative to an approved tuberculosis test within sixty (60) days prior to entry, or originate from an accredited herd.

5. Feeder cattle from a modified accredited state or area are exempt from tuberculosis testing requirements unless required by the chief livestock health official.

6. Steers and heifers for carcass classes shall be officially identified but shall not be required to be tuberculosis tested if originate from an accredited herd or from a tuberculosis free state.

(3) Other disease requirements.

(a) Scabies. No cattle affected with or exposed to scabies or from an area quarantined because of scabies shall be imported, shipped,

driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(b) Ticks. No cattle infested with ticks (*Margarophus Annulatus*) or exposed to tick infestation shall be shipped, trailed, driven or otherwise moved into Kentucky for any purpose.

(c) No cattle from a state-federal tick quarantined area shall be shipped, trailed, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for entry.

(4) Other movements. Slaughter cattle. Cattle consigned for immediate slaughter may be imported without official test for brucellosis or tuberculosis provided such cattle are consigned for immediate slaughter to a recognized slaughtering establishment under state, federal or municipal inspection or to an approved state-federal stockyard or federal stockyard for reconsignment to a recognized slaughter establishment. Animal(s) diverted en route will be in violation of this regulation.

(5) Exhibition. All cattle shall be in compliance with requirements noted above and shall be accompanied with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 3. Horses. (1) General requirements.

(a) All horses and other equidae entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection except horses and other equidae purchased at an approved out-of-state horse sale. Certificate shall include all tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used.

(b) Attached to the Certificate of Veterinary Inspection shall be a copy of a certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to an AGID test or other USDA approved test for equine infectious anemia.

(c) Horses with evidence of a contagious, infectious or communicable disease or exposure thereto shall not be eligible for entry.

(2) Specific diseases.

(a) Equine infectious anemia.

1. All horses and other equidae six (6) months of age or older except unweaned foals accompanied by their dam, offered for sale shall be negative to an AGID test or other USDA approved test for equine infectious anemia within six (6) months prior to entry except horses and other equidae purchased at an out-of-state approved horse sale.

2. Horses and other equidae purchased at an out-of-state approved horse sale:

a. May move directly to a Kentucky approved auction market. On entry into the market all horses and other equidae shall have an EIA test conducted under the requirements of 302 KAR 2:065, Section 4(1); or

b. A Kentucky licensed livestock dealer may purchase horses and other equidae and may move animals directly to his Kentucky premises. On entry into the premises animals shall be kept separate and apart from other animals on the premises. Horses may move to an approved horse sale within fourteen (14) days post entry or shall have an official EIA test conducted within fourteen (14) days post entry. The owner shall document the movement of horse(s) to an approved horse sale and when horses remain on the dealers premises the dealer shall document that an official EIA test has been conducted within the required fourteen (14) days post entry.

c. An entry permit shall be required and shall be obtained prior to entry into Kentucky. The permit may be obtained by calling (502) 564-3956 day or night.

d. In lieu of a certificate of veterinary inspection a bill of lading or waybill shall accompany horses on entry. The bill of lading or waybill shall document entry permit, number of horses purchased, individual horse identification, sex, age, color, brand, tattoo (if available), market sale identification and all other markings.

e. All horses and equidae purchased from an out-of-state approved horse sale shall be available for inspection by an agent of the Board of Agriculture.

f. Horses may be placed under quarantine on entry. Quarantine shall be released when requirements of 302 KAR 20:040 Section 3(2)(a) have been met.

g. A licensed livestock dealer may move horses that are origin out-of-state but movement shall be directly to a Kentucky approved horse sale.

h. Horses may move from an out-of-state farm of origin but movement shall be directly from the farm of origin to a Kentucky approved horse sale.

3. All horses and other equidae six (6) months of age or older, except unweaned foals accompanied by their dam, offered for entry for reasons other than sale (i.e., entry into fairgrounds, livestock showgrounds, public boarding stables, trail rides, racing, etc.) shall be negative to an AGID test or other USDA approved test for equine infectious anemia within twelve (12) months prior to entry.

(b) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal(s) to be free from symptoms of a contagious, infectious or communicable disease or exposure thereto.

Section 4. Swine. (1) General requirements.

(a) A permit shall be obtained prior to movement for all swine entering for breeding and feeding purposes.

(b) All swine shall be officially identified by a state-federal approved identification, except as noted in 302 KAR 20:220.

(c) If animals are from validated and qualified herds, the Certificate of Veterinary Inspection shall show herd validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Specific diseases.

(a) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage are eligible for import directly to a state or federal inspected slaughtering establishment only.

(b) Brucellosis. All swine for breeding purposes six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry or originate directly and immediately from a validated herd. No agglutination in dilution of 1-50 shall be accepted unless the individual or individuals to be imported are negative to an official card or PCFIA test. On entry, animals must be quarantined for no less than thirty (30) days and must show a negative post movement brucellosis test within thirty (30) to sixty (60) days of entry.

(c) Pseudorabies. All swine imported for breeding, sale or exhibition purposes shall be negative to an official blood test within thirty (30) days prior to entry or originate directly and immediately from a qualified herd, and originate from a farm free of pseudorabies for the past six (6) months as evidenced on the Certificate of Veterinary Inspection. On entry, animals must be quarantined and shall show a negative post movement pseudorabies test within thirty (30) to sixty (60) days of entry.

(d) Feeder pigs. All feeder pigs must also comply with 302 KAR 20:210, Pseudorabies surveillance.

(3) Other movements. Farm premises. Identity to the farm of origin must be maintained on all breeding and feeding swine imported from farm premises to an approved stockyard or farm of destination.

(4) Exhibition. All swine shall be in compliance with requirements noted above for swine with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 5. Sheep. (1) General requirements. Certificate of Veterinary Inspection must have prior approval by the chief livestock health official of the state of origin.

(2) Specific diseases.

(a) Scrapie.

1. Entry for sale. No sheep or lambs shall be imported that originate from or known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS vs. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for entry for sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA VSFC Program.

2. Entry for exhibition.

a. Sheep or lambs shall be eligible for exhibition which originate from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC).

b. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS Veterinary Services may be eligible for exhibition only if no clinical scrapie has occurred in the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Services Laboratory (NVSL) within the past eighteen (18) months. A statement by the veterinarian issuing Certificate of Veterinary Inspection shall document origin flock is in compliance with the USDA VSFC Program and the origin flock has not had clinical scrapie within the past eighteen (18) months and no animal(s) from the origin flock has been diagnosed as positive for scrapie by NVSL within the past eighteen (18) months.

c. All sheep and lambs for exhibition shall be in compliance with other requirements as noted in this administrative regulation for sheep and lambs and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

(b) Scabies. All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies eradicated free area.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious exyhma shall not be imported.

(d) Sheep and lambs infected with a contagious, infectious and communicable disease are not eligible for entry, sale or exhibition.

(2) Other movements. Healthy sheep and lambs may be imported into Kentucky for immediate slaughter when consigned directly to a recognized slaughtering center approved by the chief livestock health official of Kentucky or to a public stockyard, a state-federal approved stockyard, concentration point or public stockyard when reconsignment from that point is to immediate slaughter.

(3) Exhibition. All sheep and lambs for exhibition shall be in compliance with requirements noted above as specified for sheep and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

Section 6. Goats. (1) Specific diseases.

(a) Scabies. All goats must originate from a scab-free area.

(b) Scrapie. No goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall be imported.

(c) Brucellosis. Animals six (6) months of age or older shall have an official negative test within thirty (30) days prior to entry or originate directly and immediately from a certified herd.

(d) Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within sixty (60) days prior to entry or originate directly and immediately from accredited herd.

(2) Exhibition. All goats for exhibition shall be in compliance with requirements noted above as specified for goats with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 7. Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on the Certificate of Veterinary Inspection which shall accompany the animals.

(2) Specific diseases. Salmonella Pullorum. Negative agglutination test within thirty (30) days prior to date of entry. The laboratory conducting the test and test results shall be recorded on a Certificate of Veterinary Inspection and certificate shall accompany poultry.

(3) Other movements. Chicks and hatching eggs shall originate from a flock under the National Poultry or National Turkey Improvement Plan.

(4) Exhibition. Certificate of Veterinary Inspection stating compliance with above requirements and in addition thereto all poultry shall be inspected prior to exhibition for evidence of any contagious, infectious, or communicable disease of poultry. Evidence of any contagious, infectious or communicable disease shall be justification for the elimination of said poultry from exhibition or sale at no expense to the Commonwealth of Kentucky.

Section 8. Psittacine Birds. As regulated by 9 CFR Part 82.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.); qualifies dog if it is one (1) year of age when vaccinated: provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Bureau for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Fur Bearing Animals, Domesticated Wild Animals and Zoo Animals. Wild and semiwild animals under domestication or in custody may be imported into the state if accompanied by a permit and Certificate of Veterinary Inspection and provided that a report of the number of animals is made to the chief livestock health official of Kentucky within ten (10) days and that immediate opportunity for examination is afforded a representative of the Division of Animal Health, Kentucky Department of Agriculture, to determine the health status of such animal or animals and the imports are presented for the administration of all laboratory procedures and tests deemed necessary by the chief livestock health official of Kentucky. Transportation permit required on wild, game animals, birds and fish. Permit to be obtained from Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601 (telephone (502) 564-3400).

Section 11. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. prior to entry into Kentucky. Permit number shall be recorded on the Certificate of Veterinary Inspection and certificate shall accompany ratite(s) on entry.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for entry.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to entry.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to entry.

(c) Certificate of Veterinary Inspection shall include a statement that ratites are healthy and are not known to have been exposed to any contagious, infectious or communicable diseases within the last six (6) months.

(3) Exhibition. Ratites presented for exhibition shall be in compliance with requirements noted above as specified for ratites with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 12. Camelids (Llamas, Alpacas, Camels, etc.). (1) General requirements.

(a) A permit shall be obtained prior to entry of camelids into Kentucky by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. Permit number shall be recorded on Certificate of Veterinary Inspection and certificate shall accompany animal(s) on entry.

(b) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Specific diseases.

(a) Brucellosis. Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to entry.

(3) Exhibition. All camelids for exhibition shall be in compliance with requirements noted above as specified for camelids with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: April 3, 1998

FILED WITH LRC: April 3, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: Seventeen (17) approved equine auction markets.

(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: Less requirements would need to be met by the consignor of individual equine.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body: Less regulatory efforts would be required permitting department employees to concentrate their efforts on more serious problems.

(a) Direct and indirect costs or savings:

1. First year: Less surveillance by department inspectors at

market sites.

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

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: No additional paperwork required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department currently budgets for implementing this program. There is not expected to be any additional cost as a result of this amended regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: All comments received have been supportive of these amended changes being implemented as soon as possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method would be to require the test prior to the animal entering the premise. This would require additional regulatory effort and would be of little benefit to the low prevalence of this virus.

(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 animals selling at approved auction markets will be tested at the time of the sale treating in-state and out-of-state equine equally with no bias.

STATEMENT OF EMERGENCY

803 KAR 6:010E

This emergency administrative regulation concerns the Kentucky Labor Cabinet's Labor Management Matching Grant Program. The primary purpose for the amendment to this administrative regulation is to insert the requirement in Section 12 that all prospective grantees agree to sign a statement that they will conduct all grant business in compliance with Title IV of the Civil Rights Act of 1964, as codified in 42 USC 2000d and KRS 334.015. At the same time, this agency has determined that it should make additional changes in this administrative regulation, including drafting and name changes. The other significant amendments to this regulation include: deleting the requirement that grantees are limited to a maximum of five (5) grant projects; deleting the requirement that grant organizations shall secure independent audits of grant funds; deleting the requirement that grantees maintain records for three (3) years and substituting the requirement that records be maintained until all outstanding questions are answered; and correcting the name of the Labor Cabinet office responsible for processing and monitoring grants. It is necessary to promulgate this emergency administrative regulation in order to comply with federal mandate of 42 USC 2000d and KRS 334.015. This is the only program area in the Labor Cabinet which has not implemented the requirement contained in the above-referenced civil rights laws. If this administrative regulation is not implemented immediately in time for the new grant year applications, the Labor

Cabinet risks losing federal funds for its other programs. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent to promulgate an administrative regulation will be filed with the Regulations Compiler on the same date that this emergency administrative regulation is filed.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Secretary

KENTUCKY LABOR CABINET
Office of Labor Management Relations and Medication

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program.

RELATES TO: KRS 336.165 [Chapter 336, HB 331 of the 1990 General Assembly]

STATUTORY AUTHORITY: KRS 13A.200, 336.165 [HB 331 of the 1990 General Assembly]

EFFECTIVE: March 20, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 336.165 requires the Office of Labor Management Relations to provide grants-in-aid to labor management organizations that include both labor and management representatives, for the purpose of improving labor management relations or [improving] communications with respect to subjects of mutual interest or concern to labor and management. This administrative regulation establishes the grant procedure, including the labor management organizations eligible to be funded; the local match, application, and reporting requirements; the selection criteria; and the other terms and conditions governing the grant process. [This amendment to the existing administrative regulation is promulgated to clarify the grant procedure. The function of this administrative regulation is to define what types of labor management organizations are eligible for funding; define local match requirements associated with a grant-in-aid; explain the application cycle, application requirements and reporting requirements; selection criteria for projects that will be funded; and terms and conditions governing the grant process.]

Section 1. Definitions. (1) "Director" means the Executive Director of the Office of Labor Management Relations.

(2) "Grant" means a grant-in-aid dispensed through the Office of Labor Management Relations for the purpose of improving labor management relations or communications with respect to subjects of mutual interest or concern to labor and management.

(3) "Office" means the Labor Cabinet's Office of Labor Management Relations.

Section 2. Eligibility. (1) Any existing or newly created labor management committee is eligible to apply for project funding provided it encompasses any one of the following: a specific geographic area within Kentucky, such as a municipality or [;] several contiguous counties; a work site; [~~a plant~~]; an industry; or a segment of the public sector, such as police officers, firefighters, or teachers. Institutions of higher learning are also eligible for funding under the program provided they are involved in educational or research projects relating to the improvement of labor management relations.

(2) To be funded, the organization shall [must meet the following criteria: it must] have a specific project proposal that can be completed in a one (1) year period; be organized jointly by employers and employee organizations in that area, work site [plant], industry, or segment of the public sector; and be established for the purpose of improving labor management relations and communications, promoting job security or [;] organizational effectiveness, enhancing economic development, or involving workers in decisions affecting their jobs; and improving communications with respect to subjects of mutual interest or concern to employers and their employees. The project shall [must] include persons representing the labor management

community within the area, work site [plant], industry, or segment of the public sector that it serves.

(3) For institutions of higher learning, the college or university shall [must] be involved in providing educational services concerning subjects relative to the improvement of labor management relations or be involved in research projects that relate to the improvement of labor management relationships.

Section 3. Application Process. (1) The office shall annually publish a grant application package explaining [that shall explain] eligibility requirements, selection criteria, match requirements, reporting requirements, and any other information applicable to the grant program.

(2) The office shall prepare and make available all forms for documentation necessary to administer the program. Any organization or institution seeking project funding under the program shall submit an application package to the office.

Section 4. Selection Criteria. (1) Selection criteria [that will be] used by the office in making grant awards shall [will] include:

(a) The extent to which the application has clearly identified the issues or problems that the proposed project will address;

(b) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the expected project results;

(c) The appropriateness of organization membership and the degree of commitment of those individuals to the goals and objectives of the proposed project;

(d) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates;

(e) The cost effectiveness and fiscal soundness of the applicant's budget request and long-term budget, as well as identification of the amounts and sources of the local match; and

(f) The overall feasibility of the proposed project in light of all of the information presented for consideration and the overall quality of the application; and [;]

(g) For organizations that have received at least one (1) previous grant, the extent to which the grantee has complied with the requirements of this administrative regulation.

(2) No funds shall be awarded under the following circumstances:

(a) Work-site [~~in-plant~~] labor management projects unless the employees in that work site [plant] are represented by a labor organization and there is in effect at that work site [plant] a collective bargaining agreement;

(b) An area, industry-wide, or public sector labor management project unless participants in the sponsoring organization include any labor organization certified or recognized as the representative of employees of an employer participating in an [~~such~~] organization. However, employers whose employees are not represented by a labor organization may participate in area, industry-wide or public sector organizations;

(c) To any organization which interferes with the collective bargaining activities at [~~in~~] any work site [plant], industry, or segment of the public sector; or

(d) For recreational projects, such as labor management golf, fishing, or tennis outings.

Section 5. Grant Amounts. (1) Project grants to eligible labor management organizations shall be limited to a maximum amount of \$15,000 per project for area and industry specific labor management organizations and to a maximum of \$10,000 per project for work site [~~in-plant~~], public sector, and institution of higher learning-based labor management organizations.

(2) The office may reduce the requested amount of grant funds based on the appropriateness of the proposed project to goals and objectives of the grant program and to other [~~such~~] selection criteria as stated in Section 4(1)(a) through (g) of this administrative regula-

tion.

Section 6. Length of Grants. (1) All grant awards shall be limited to a period of twelve (12) months. The grant program year shall [will] run July 1 through June 30.

(2) Funding of one (1) project does not guarantee funding of others. Applications for project funding shall be considered on a project-by-project basis annually. Project goals and objectives shall be capable of being completed within a one (1) year period.

~~[(3) As it is the intent that organizations seeking funding become self-sufficient over a five (5) year period, organizations will be limited to a maximum of five (5) project grants:]~~

Section 7. Matching Requirement. (1) Matching grants under the program shall not exceed ninety (90) percent of the total operating cost of the funded project.

(2) Matching funds may come from private sources or from local and federal government sources. Proceeds from project grants or other funds obtained from other agencies of state government shall [may] not be used to meet match requirements.

(3) Local matching funds shall [must] include at least fifty (50) percent cash and no more than fifty (50) percent "in-kind" services, such as donated office space, clerical support, equipment, postage, etc., which directly accomplish[es] the objectives of the project. In considering projects for funding, the office shall give preference to full cash match as opposed to cash plus in-kind services.

(4) Grant applications shall [must] be accompanied by letters of commitment from official representatives of public or private sources of matching funds.

(5) As a goal of a labor management committee is to become self-supporting, project income shall be an allowable source of matching funds after the organization has completed one (1) successful project.

Section 8. Reporting Requirements. (1) The Office of Labor Management Relations shall monitor and evaluate the activities of an organization receiving grant funding.

(2) A participating organization shall submit monthly to the office a programmatic report outlining the goals and objectives which have been achieved during the previous month. This report shall [must] specify if the major milestones identified by the applicant in its application package are being met in accordance with the timetable provided and, [-] if not, an explanation of why these milestones have not been met shall be provided. This report shall be on forms prepared by the office. An applicant shall also submit to the office monthly expenditure reports summarizing and describing line-item costs charged to the grant and line-item matching share supplied by the applicant where applicable. These expenditure summaries shall be on forms prepared by the office. The monthly report shall be submitted to the office no later than the tenth of the month following the end of the monthly reporting period.

(3) To enable the office to better monitor and evaluate funded projects, it may schedule meetings of representatives of organizations receiving project funding, and a grantee shall attend any scheduled meeting. ~~[Attendance by grantees at any such scheduled meeting shall be mandatory:]~~

Section 9. Application Requirements. (1) The application for project funding by area, work site [in-plant], industry-wide, and public sector labor management organizations shall include the following information:

(a) Eligibility certification.

1. A description of the structure of the organization (e.g., not for profit, incorporated, etc.) including any articles of incorporation, not for profit certification, or current bylaws;

2. The specific geographic area or specific industry served by the organization;

3. A list of the board members and their affiliation including current letters of commitment from all board members and cochairpersons;

4. The name, title, and job description of all full-time and part-time organization staff;

5. A brief organization history including its formation date, major focus and activities, and ~~[past]~~ funding history, if applicable; and

6. The name and a summary of the nature of the organization's affiliation with other local, state, or federal agencies or organizations.

(b) Goals and objectives. Using specific goals and objectives, which shall be expressed in measurable terms, a description of what the labor management project will [shall] accomplish within the grant period and [-] ~~Goals and objectives shall be expressed in measurable terms. In addition,~~ a description of the criteria used by the organization to evaluate its success in meeting specific goals and objectives.

(c) Implementation timetable. An outline of the applicant's proposed activities during the grant period with major milestones or activities and target dates for accomplishing goals and objectives.

(d) Budget. A detailed budget and budget narrative for the project for the grant period, including a summary of the source of the local match; documentation specifying the dollar amount or the commitment from sources of the local match; if in-kind contributions are being included as part of the local match; documentation as to what constitutes the in-kind contribution and its estimated dollar value.

(2) An application for project funding by institution of higher learning-based labor management organizations shall include the following information:

(a) Eligibility certification.

1. A description of the primary nature of the institution's business (e.g., university, college, or community college, etc.);

2. A description of the intended beneficiaries of the educational or research and development project to be undertaken (e.g., companies, unions, labor management committees, industries, etc.); and

3. The names of individuals who will be involved in the project and a summary of their qualifications, including ~~[the previous experience of the individuals who will be involved in the project and]~~ references, copies of previous research projects, and [a] descriptions of ~~[past]~~ labor management experience.

(b) Scope of work.

1. A description of the project to be undertaken with the grant funds, including a list of the objectives of the project;

2. A description of the target audience who will benefit from such project and a summary of anticipated results of the project; and

3. An explanation of the methodology to be used in the project (e.g., data collection, surveys, personal interviews, symposia, etc.).

(c) Implementation timetable. An outline of the proposed activities of the project over the grant period with major milestones or activities and target dates for accomplishing the project's objectives.

(d) Budget. A budget and budget narrative for the project for the entire grant period shall be submitted, including a summary of the source of any funds to be used to supplement the state grant, [-] the total project cost, and ~~[as well as]~~ the amount and source of other funds to be devoted to the project.

Section 10. Application Evaluation. (1) Applications shall be reviewed and evaluated for completeness by the office staff under the supervision of the director. The review and evaluation process shall be completed within forty-five (45) days after receipt of the application package by the office.

(2) Upon receipt of a completed application for a matching grant, the director shall provide a copy of the application to the Secretary of Labor for review and comment prior to awarding any grant. The director shall consider the recommendations and comments of the Secretary of Labor in awarding grant funds.

Section 11. Unexpended Funds. ~~[Audit Policy. (1) An independent audit of grant fund expenditures by organizations shall be performed.~~

~~Organizations are responsible for arranging for the audit of project expenditures within thirty (30) days of completion of the project. The audit shall include an examination of the organization's project records to determine that financial standards are maintained in accordance with generally accepted accounting principles and that project funds were expended in accordance with the terms of the grant. Costs for conducting the audit shall be a legitimate budget item. The organization shall submit three (3) copies of the completed report to the office.~~

~~(2) Grant funds not expended by the organization at the end of the grant period shall be returned to the Kentucky Labor Cabinet. [Management Matching Grant Program.]~~

Section 12. Project File. (1) The office shall establish and maintain an official project file and assign a grant number for each grant project.

(2) The project file shall contain the notice of grant award which shall be signed by the Secretary of Labor and an authorized representative of the participating organization applying for funding. The notice of grant award shall cite the statutory authorization for the grant, the total dollar amount of the grant, all special terms and conditions of the grant, ~~and~~ an authorization for the grantee to incur costs against the grant during the grant period, and a statement that the grantee will conduct all grant business in compliance with Title VI of the Civil Rights Act of 1964, as codified in 42 USC 2000d and KRS 334.015. The grantee's authorized signature shall constitute acknowledgment of the grantee's acceptance of the grant award and all terms and conditions governing the grant.

Section 13. Terms and Conditions Governing the Grant. (1) Fiscal recording/reporting requirements. The grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the financial results of the grant program. The grantee is accountable for all grant funds received. Grant funds received by the grantee shall be deposited timely and intact into a separate bank account established solely for the use of the grant funds. The grantee shall maintain effective control and accountability over all funds, equipment, property, and other assets under the grant as required by the office. The grantee shall keep records which detail the expenditures of grant funds and accurately document such expenditures sufficient to permit the tracking of grant funds.

~~(2) [Audit requirement. A final financial and compliance audit shall be performed by the grantee. This audit shall include both the state and required matching share of the project. The grantee shall be responsible for correcting any deficiencies disclosed by such audit, including such action as the office, based on its review of the audit report, may direct. The audit of all appropriate project records shall be performed by an independent public accountant certified and licensed by the state of Kentucky.]~~

(3) Matching contributions. As required in Section 7 of this administrative regulation, the grantee's matching contribution shall ~~(meet all of the following criteria):~~

- (a) Be under the control of the key project officer;
- (b) Be necessary and reasonable for proper and sufficient administration of the program;
- (c) Be critical to the success of the project if it is a personal service match;
- (d) Be supported by individual monthly time records of services rendered and detailed documentation of all other applicable, direct, and indirect costs of the program;
- (e) Not be a general expense of the grantee which is incurred in carrying out overall responsibilities other than those required under the grant.

(3) [(4)] Modification and amendment of the grant. A grant is subject to revision only as follows:

- (a) Modifications by operation of law. Any modification required by changes in state statutes [law] or administrative regulations shall be incorporated into the grant as fully as if set forth in the terms and

conditions. The office shall notify grantees of any amendment to administrative regulations.

(b) Modifications in budget. Grantee may make a line-item transfer only with prior written approval by the director. The grantee shall not make any change in line items which increases the total grant budget.

(c) Suspension. If the grantee fails to comply with the special conditions or the general terms and conditions of the grant award, the office may, after notice to the grantee, suspend the grant and withhold further payments or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee. The office may determine to allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension, provided the costs were necessary and reasonable for the conduct of the project.

(d) Termination. A grant may be terminated as follows:

1. Termination due to loss of funding. The office may terminate, in full or part, any grant in the event the office suffers a loss of state appropriations. If loss of state appropriations occurs, the office shall give the grantee written notice of the effective date of full or partial termination, or if a change in funding is required, notice of the change and the changes in the approved budget.

2. Termination for cause. If the office determines that the grantee has failed to comply with the general terms and conditions of the grant, the office may terminate the grant, in whole or part, at any time before the date of completion. The office shall promptly notify the grantee in writing of the determination to terminate, the reasons for such termination, and the effective date the termination shall occur.

3. Termination for convenience. The office or the grantee may terminate the grant, in whole or part, when the office and the grantee agree that continuation of the project objectives would not produce beneficial results commensurate with further expenditures of funds. The office and the grantee shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion of the grant to be terminated. The grantee shall not incur further obligations for the terminated portion after the effective date and shall cancel all outstanding obligations possible. The office shall allow full credit to the grantee for the office's share of the noncancellable obligations properly incurred by the grantee prior to termination.

(e) Access and inspections. The grantee shall at any time permit the office or the State Auditor's office or any of their duly authorized representatives to have full access to and the right to examine any pertinent books, documents, papers, and records of the grantee involving transactions related to a grant until the grantee is notified that any unanswered questions concerning the grant have been resolved to the satisfaction of the office, [for three (3) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later.]

(f) Access and inspection of subcontractors. The grantee shall include in any grant proposal a provision that the office or the State Auditor's office or any of their duly authorized representatives shall have full access to and the right to examine any pertinent books, documents, papers, and records of any subcontractor involving transactions related to a grant ~~[for three (3) years from the final payment under the contract].~~

(g) Monitoring and evaluation. All grants shall be monitored periodically by the office throughout the program year for compliance with this [these] administrative regulation or other procedures established by the office [regulations]. Evaluations shall be made both during the operation of the program and upon its completion. Program evaluation shall be based on the ability of the grantee to meet specific goals and objectives outlined in the application and for the effective and efficient utilization of grant funds.

(h) Liabilities. The grantee shall agree to be solely liable for all claims, demands, and actions based upon or arising out of any services performed by themselves or by their associates and employees [employers] under a grant.

(i) Publication, reproduction, and use of material. The office may ~~[shall have authority to]~~ publish, distribute, and otherwise use any reports, data, or other materials prepared with grant ~~[through]~~ funds. Any publication produced as a result of grant funds shall include on its title page the following citation: "This project was conducted with funds provided under the Kentucky Labor Management Matching Grant Program by the Kentucky Labor Cabinet's Office of Labor Management Relations."

(j) Interest on grant funds. All interest earned on grant funds held by the grantee shall become part of the grant principal ~~[principle]~~ when earned; interest earned on grant funds may be retained by the grantee when the office determines that the cost of accounting for the interest or allocating the interest to the grant principal ~~[principle]~~ is significant in comparison with the interest earned. Any interest earned under the grant, and not expended as grant principal ~~[principle]~~ during the term of the grant, shall be returned to the office.

(k) Grantees shall agree that no grant funds shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office, nor shall they be used in any way to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election or voter registration activity.

JOE NORSWORTHY, Secretary
KEMBRA SEXTON TAYLOR, General Counsel
APPROVED BY AGENCY: March 17, 1998
FILED WITH LRC: March 20, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: Gary Moberly, Kembra Sexton Taylor

(1) Type and number of entities affected: The amendments to this regulation affect all labor management organizations which seek funding from the Kentucky Labor Cabinet's Labor Management Matching Grant Program.

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

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

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no costs associated with this revision.

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

1. First year following implementation: See below.

2. Second and subsequent years: There are no additional factors in these revisions which will increase or decrease costs. There will be no effect upon competition. Furthermore, these amendments will not require any additional reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The Kentucky Labor Cabinet is required to make certain that all entities which receive funds from this agency comply with federal civil rights laws; otherwise, the cabinet could lose federal funding for its other programs. In addition, the other changes made to this regulation simplify the grant procedure and reporting requirements, thereby ultimately assisting the agency in administering the program.

(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: There will be no significant additional paperwork or reporting requirements as a result of these changes.

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

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

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because this is the most effective, least burdensome method of accomplishing the goals set forth in state and federal statutes.

(8) Assessment of expected benefits:

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

(b) State whether 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: Was tiering applied. No. This regulation applies to employer-employee organizations who choose to seek a grant for their labor-management program. The regulation is, in essence, already tailored to fit the particular circumstances surrounding the entities covered by this regulation. Therefore, tiering, as defined in KRS 13A.010(16) does not apply to this situation.

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. The amendments to this administrative regulation will not have any additional impact upon local governments over and above what is already in effect.

3. State the aspect or service of local government to which this administrative regulation relates. The Labor Cabinet's labor management grant program applies to employment relations between managers and employees in local governments who apply for labor management matching grants.

4. How does this administrative regulation affect the local government or any service it provides? Local governments which have labor management organizations and which apply for matching grants are better able to provide services due to enhanced labor management relations.

STATEMENT OF EMERGENCY 907 KAR 1:006E

This emergency administrative regulation is being promulgated to implement provisions of the Balanced Budget Act of 1997 (PL 105-33) providing payment of Part B Medicare premiums for an increased number of individuals. This action must be taken on an emergency basis to assure that the affected individuals continue to be able to participate in the Medicare Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health of low-income Kentuckians by preventing them from having access to the Medicare Program. This emergency administrative regulation shall be replaced by an ordinary administrative

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tive regulation filed with the Regulations Compiler.

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

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

907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.

RELATES TO: KRS 205.520, 42 USC 1396a, PL 105-33

STATUTORY AUTHORITY: KRS 194.050, 205.520, EO 96-862

EFFECTIVE: April 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance] in accordance with Title XIX of the Social Security Act. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the special coverage factors applicable to both categorically needy and medically needy individuals eligible for benefits under Title XVIII, Part A, Hospital Insurance Benefits (HIB); Title XVIII, Part B, Supplementary Medical Insurance (SMI); Title XVIII Qualified Medicare Beneficiaries (QMB); [and] Title XVIII Qualified Disabled Working Individuals (QDWI); Title XVIII Specified Low-Income Medicare Beneficiaries (SLMB) and Title XVIII Qualified Individuals (QI).

Section 1. Purchase of Coverage under SMI. The cabinet shall pay the SMI premium for [all] recipients eligible for such coverage who are receiving a money payment under either the Supplemental Security Income program or the state program of optional or mandatory supplementation.

Section 2. Deductibles and Coinsurance. Effective for services provided on or after February 1, 1989, the cabinet shall pay the deductible or coinsurance amount for a [any] medical service covered under HIB or SMI to an individual eligible for such coverage. The actual amount paid for coinsurance shall be the uncovered percentage of the total permissible cost for the service as determined by the cabinet.

Section 3. Limitations Applicable to Nonmoney Payment Recipients. An [Any] HIB/SMI eligible categorically needy or medically needy individual, for whom the cabinet does not purchase SMI coverage, is expected to retain HIB/SMI coverage, with premium payments considered as an income deduction. Failure to retain such coverage does not obligate the cabinet for [any] payment in excess of the deductible and coinsurance amounts.

Section 4. Coverage for Qualified Medicare Beneficiaries. Effective January 1, 1989, qualified Medicare beneficiaries as defined in 907 KAR 1:011 shall be entitled to the following coverage, regardless of whether the medical service is covered under the medical assistance program as a regularly covered service:

- (1) Payment of Part A and Part B Medicare premiums;
- (2) Deductibles; and
- (3) Coinsurance.

For providers not regularly participating in the Medicaid program, the appropriate agreement must be made with the Department for

Medicaid Services to provide for limited participation in the Medicaid program; if the appropriate agreement is not made, the services will not be considered to be covered under this section.

Section 5. Qualified Disabled Working Individuals. Effective July 1, 1990, in accordance with Section 6408(d) of the Omnibus Budget Reconciliation Act of 1989, the cabinet shall pay the Medicare Part A premium for [all] recipients who meet [all] the requirements to be a qualified disabled working individual as defined in Sections 1818 and 1905(s) of the Social Security Act.

Section 6. Specified low-income Medicare beneficiaries as defined in 907 KAR 1:011 are entitled to payment of the Part B Medicare premium.

Section 7. Qualified individuals (QI) as defined in 907 KAR 1:011 shall be entitled to payment of the Part B Medicare premium for Group I and the payment of that portion of the Medicare Part B premium attributable to home health costs for Group II. The number of individuals eligible in this group shall be limited by a block grant and eligibility shall be established on a first-come-first-served basis. In subsequent years preference shall be given to the individuals who qualified the previous year. Coverage for this group shall terminate on January 1, 2003.

LARRY A. MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998

FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 potential individuals eligible for Medicare.

(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: There are no state funds which are being expended to implement this provision.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no state funds which are being expended to implement this provision.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: the department must track the number of new individuals served and the amount of federal funds expended.

(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 Health Care Financing Administration has allocated 100% federal funds equaling \$3,970,000

in order to implement this provision.

(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: Citizens with greater than 120% and less than or equal to 175% of the federal poverty level will receive assistance paying Part B Medicare premiums.

(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 of Medicaid recipients by preventing access to the Medicare Program.

(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: NA

(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. No

3. State the aspect or service of local government to which this administrative regulation relates. None

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. None

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. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:011E

This emergency administrative regulation is being promulgated to implement the following changes mandated by the Balanced Budget Act of 1997 (PL 105-33):

(a) Provide coverage to children who were receiving supplemental security income on August 22, 1996, and but for the change in definition of childhood disability mandated by PL 104-193 would still be receiving supplemental security income;

(b) Provide payment of the Part B Medicare premium for individuals with income greater than 120 percent and less than or equal to 135 percent of the federal poverty level; and

(c) Provide payment of that part of the Medicare Part B premium which is attributable to home health costs for those individuals with income greater than 135 percent and less than or equal to 175 percent of the federal poverty level.

This action must be taken on an emergency basis to assure continued Medicaid coverage for the disabled children and continued Medicaid coverage for the elderly and disabled adults. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients by preventing eligible children access to the Medicaid Program and eligible adults from accessing the Medicare Program. A delay in promulgating this administrative regulation was as a result of a delay in receiving clarifications from the Health Care Financing Administration. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 45 CFR 233.100, 8 USC 1612, 1641a, b, c, 38 USC 101, 107, 1304, 5303A, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a, b, c, d, e

STATUTORY AUTHORITY: KRS 194.050, 205.520 [42 CFR 403, 435, 45 CFR 233.100, 8 USC 1641a, b, c, 38 USC 101, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a, b, c, d, e], EO 96-862

EFFECTIVE: April 6, 1998

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 any [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 technical eligibility requirements of the Medicaid Program.

Section 1. Definitions. (1) "Child" means a dependent person who:

- (a) 1. Is under the age of eighteen (18); or
 2. Is under age nineteen (19) if the person is:
 - a. A full-time student in a secondary school or the equivalent level of vocational or technical training; and
 - b. Expected to complete the program before age nineteen (19);
 - (b) Is not self-supporting;
 - (c) Is not a member of the Armed Forces of the United States; and
 - (d) If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative.
- (2) "Kentucky Transitional Assistance Program (K-TAP)", means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF) Program, a money payment program for children who are deprived of parental support or care due to:
- (a) Death;
 - (b) Continued voluntary or involuntary absence;
 - (c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or
 - (d) Unemployment of one (1) parent if both parents are in the home.
- (3) "Minor teenage parent" means an individual who:
- (a) Has not attained eighteen (18) years of age;
 - (b) Is not married; and
 - (c) Has a minor child in his care.
- (4) "Qualified alien" is defined in 8 USC 1641(a) through (c).
- (5) "Veteran" is defined by 38 USC 101.

Section 2. The Categorically Needy. An individual receiving Title IV-E benefits, supplemental security income, optional or mandatory state supplementation shall be eligible for Medicaid as a categorically needy individual. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation.

- (1) A child in a foster family care or private nonprofit child caring institution dependent in whole or in part on a governmental or private agency;
- (2) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;
- (3) A pregnant woman;
- (4) A child of unemployed parents;
- (5) A child in a subsidized adoption dependent in whole or in part on a governmental agency;
- (6) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.
- (7) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards;
- (8) A child (but not his parents) who would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996, who was born after September 30, 1983 and who is under the age of five (5); and effective July 1, 1987, a child (but not his parents) who would have been financially eligible for Aid to Families with Dependent Children benefits using AFDC methodologies in effect on July 16, 1996, who meets the definition of Section 1(1) of this administrative regulation;
- (9) A child born to a woman eligible for and receiving Medicaid if the child has not reached his first birthday, resides in the household of the woman, and the woman remains (or would remain if pregnant) eligible for the assistance. In this situation, an application shall be

deemed to have been made and the child found eligible for Medicaid as of the date of birth;

(10) An individual in an institution meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for a similar hospice participant and similar participant in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled shall also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall not be determined in accordance with this provision;

(11) A qualified severely impaired individual as specified in 42 USC 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(12) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in 42 USC 1383c;

(13) An individual specified in 42 USC 1383c who loses SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f), would be eligible for SSI or SSP except for these benefits, and is not entitled to hospital insurance benefits under the Medicare program;

(14) A woman during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and an infant and child under six (6) years of age, as specified in 42 USC 1396a(1)(I), shall be required to meet the income requirements for this eligibility group as specified in 907 KAR 1:640;

(15) If an eligible infant or child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the infant or child remains otherwise eligible except for age;

(16) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, a child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 USC 1396a(1)(I); and

(17) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1998, providing that federal Medicaid matching funds are available to cover the costs of the program, a child born on or before September 30, 1983 who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(1)(I);

(18) Applicable with regard to determinations of eligibility for periods beginning on or after January 1, 1991, a disabled widow, widower and disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(19) A child who was receiving supplemental security income on August 22, 1996 and but for the change in definition of childhood disability would continue to receive supplemental security income; and

(20) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled, "Factor VIII or IX Concentrate Blood Products Litigation".

Section 3. The Medically Needy. An individual (including a child as shown in Section 2(8) of this administrative regulation), and a pregnant woman meeting income and resource standards of the medically needy program meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet his basic maintenance needs may apply for Medicaid with need

determined in accordance with income and resource standards prescribed by 907 KAR ~~(1:004 and 907 KAR)~~ 1:640 through 907 KAR 1:665 of the Cabinet for Health Services. The medically needy eligible groups shall include:

- (1) A pregnant woman during the course of her pregnancy; and
- (2) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, ~~and~~ Qualified Disabled Working Individuals; Specified Low-income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage is extended to a qualified Medicare beneficiary as specified in 42 USC 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645 ~~(1:004)~~, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) A qualified disabled working individual as defined in 42 USC ~~[1396i-2 and]~~ 1396d(s) ~~[of the Social Security Act]~~ shall be eligible under Medicaid for payment of his Medicare Part A premiums as shown in 907 KAR 1:006.

(3) Specified low-income Medicare beneficiaries as defined in 42 USC 1396a(a)(10)(E)(iii) ~~[of the Social Security Act]~~ shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) Medicare qualified individuals group 1 (QI-1) as established in 42 USC 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

(5) Medicare qualified individuals group 2 (QI-2) as established in 42 USC 1396a(a)(10)(E)(iv)(II) shall be eligible for payment of that portion of the Medicare Part B premium attributable to home health costs.

Section 5. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 2(1) through (19) ~~(7)~~ of this administrative regulation, or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition of Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children shall include:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent shall not have refused suitable employment without good cause as determined in accordance with 45 CFR 233.100(a)(3)(ii);

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work if it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute if the involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual shall be at least sixty-five (65) years of age.

(6) A blind individual shall meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to RSDI and SSI.

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c relating to RSDI and SSI.

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child determined in accordance with usual program requirements.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall meet the following conditions:

a. Received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Gross income minus child care cost is less than 185 percent of the federal poverty income level;

d. The reporting requirements shall have been met no later than

the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program.

2. If a family no longer has a dependent child living in the home, Medicaid for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child determined in accordance with usual program requirements.

3. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin; and

10. First cousin once removed;

11. A relative of the half-blood;

12. Preceding generations denoted by prefixes of:

a. Grand;

b. Great;

c. Great-great; or

d. Great-great-great; and

13. A stepfather, stepmother, stepbrother, stepsister; stepgrandmother, stepgrandfather.

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be a:

1.a. Citizen of the United States; or

b. Effective January 1, 1997, and except as provided in paragraph (b) of this subsection, a qualified alien admitted for permanent residence; and

2. A resident of Kentucky meeting the conditions for determining

state residency under 42 CFR 435.403.

(b) A nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. Except as provided in subparagraph 2 of this paragraph, an alien shall meet all requirements for receipt of Medicaid.

2. An alien who does not receive a K-TAP or federal supplemental security income (SSI) cash payment shall:

a. Be qualified as a categorically needy recipient; and

b. Meet the income, resource and categorical requirements of the applicable cash assistance program.

3. The alien shall have (or have had within the usual period for retroactive eligibility) an emergency medical condition not related to an organ transplant procedure, defined as a medical condition (including severe pain) in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

4. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

5. The Medicaid to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not participating in a managed care partnership.

(a) Except as provided in paragraphs (b), (c), and (d) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of unemployment, eligibility shall not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met.

(c) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month in which the thirty (30) day period ends.

(d) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(14) Benefits shall be denied to a family for a month in which a legally liable caretaker relative with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(15) A responsible relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid:

(1) If a resident or inmate of a nonmedical public institution;

(2) If a patient in a state tuberculosis hospital unless he has

reached age sixty-five (65);

(3) If a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving inpatient services on his 21st birthday or is sixty-five (65) years of age or over; or

(4) If a patient in a nursing facility classified by the Medicaid program as an institution for mental diseases unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters. An individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist when the benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits; and
4. Unemployment compensation.

(2) An applicant or recipient shall not be required to apply for federal benefits if the federal law governing that benefit provides that:

(a) The benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third Party Liability as a Condition of Eligibility. (1) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, each applicant for or recipient of Medicaid shall be required to provide a social security

number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent shall still be eligible for Medicaid if financial eligibility requirements are met.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998

FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals eligible for Medicare, 3166 children previously eligible for SSI, approximately 23,000 children aged 14 to 18 years old, and 40 aliens.

(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: \$29,900,000 (costs)

2. Continuing costs or savings: \$29,900,000 (costs)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: We will need to accumulate data regarding the number of qualified individuals served and the amount of federal funds expended.

(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 regarding qualified individuals (QI's): 100% federal funds equaling \$3,970,000. Source of funds to be used for implementation and enforcement of administrative regulation regarding the children eligible for the Kentucky Children's Health Insurance Program (KCHIP): federal and state matching funds. Federal matching funds of 79.26% equaling \$23,698,740 and state matching funds of 20.74% equaling \$6,201,260. State revenues for continued eligibility for the 3166 children losing SSI eligibility and the 40 aliens have been included in the budget since they were already considered as Medicaid eligibles. State funds for the children eligible for KCHIP have also been appropriated in the Cabinet for Health Services' biennial 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: 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: This regulation will allow children who have lost their SSI eligibility to continue receiving Medicaid, and those elderly and disabled individuals whose income meets the criteria will be able to access Medicare benefits.

(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 preventing access to Medicaid and Medicare benefits by those who are deemed eligible through the provisions included in this administrative regulation.

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

(a) Necessity of proposed regulation if in conflict:

(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. No

3. State the aspect or service of local government to which this administrative regulation relates. None

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. None

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. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? No. This administrative regulation does not set stricter requirements.

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

STATEMENT OF EMERGENCY

907 KAR 1:605E

This emergency administrative regulation is being promulgated to implement the following changes mandated by PL 105-33:

(a) Provide Medicaid coverage to children who were receiving supplemental security income on August 22, 1996, and but for the change in definition of childhood disability mandated by PL 104-193 would still be receiving supplemental security income;

(b) Provide payment of the Part B Medicare premium for individuals with income greater than 120 percent of the federal poverty level and less than or equal to 135 percent of the federal poverty level; and

(c) Provide payment of that part of the Medicare Part B premium which is attributable to home health costs for those individuals with income greater than 135 percent and less than or equal to 175% of the federal poverty level.

This action must be taken on an emergency basis to assure continued Medicaid coverage for the children and continued Medicare coverage for the elderly and disabled adults. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients by preventing the affected individuals from access to the Medicaid and Medicare Programs. Promulgation of this administrative regulation was delayed due to delays in clarifications received from the Health Care Financing Administration. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH SERVICES

Department For Medicaid Services

Division Of Administration And Development

907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 416, 1382c, 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520(3), EO 96-862

EFFECTIVE: April 6, 1998

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 provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. Definitions. "Partnership" is defined in 907 KAR 1:705.

Section 2. Eligibility Determination Process. (1) Except as provided in subsection (3) of this section, eligibility shall be deter-

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mined prospectively. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria pursuant to this section and Section 3 of this administrative regulation and as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645 for the appropriate month of coverage.

(2) Each decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 1:011, 907 KAR 1:640, and 907 KAR 1:645; and
2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b) The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid shall be effective no later than the third month prior to the month of application if:

- (a) A Medicaid service was received;
- (b) Technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645; and
- (c) 1. The applicant resides in a nonpartnership county; or
2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705.

(4) Eligibility for qualified medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645.

(5) Retroactive eligibility for specified low-income Medicare beneficiary (SLMB) benefits, Medicare qualified individuals (QI) benefits and qualified disabled working individuals shall be effective no later than the third month prior to the month of application if technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645. Retroactive eligibility for a qualified individual shall not include months of a prior year.

Section 3. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days a change in circumstances which may affect eligibility. In addition, eligibility shall be redetermined:

- (a) Every twelve (12) months; or
- (b) If a report is received or information is obtained about a change in circumstances.
- (2) Pursuant to the waiver granted by the Secretary, United States Department of Health and Human Services, and promulgated as 907 KAR 1:705, a recipient shall have a one (1) time guarantee of six (6) months of eligibility regardless of a loss of technical eligibility for Medicaid during that six (6) month time period if the recipient:
 - (a) Resides in a county included in a partnership;
 - (b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705;
 - (c) Did not receive Medicaid in any of the twelve (12) months preceding participation in a partnership;
 - (d) Participated in a partnership for less than six (6) months;
 - (e) Continued to reside in a partnership region during the guaranteed six (6) month eligibility period; and
 - (f) Is not an:
 1. Incarcerated recipient;
 2. Alien who is eligible for emergency Medicaid; or
 3. A recipient requesting discontinuance of Medicaid.

Section 4. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

- (a) The parent declares physical inability to work;
- (b) The worker observes some physical or mental limitation; and
- (c) The parent:
 1. Is receiving supplemental security income (SSI);
 2. Is age sixty-five (65) or over;
 3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382c or 416 by either the Social Security Administration or the medical review team;
 4. 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 without a reexamination requested and there is no visible improvement in condition;
 5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;
 6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or
 7. 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 shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

- (a) Receives RSDI or railroad retirement benefits based on disability; or
- (b) Received SSI based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition; or
- (c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382C by the Social Security Administration; or
- (d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition.

(4) A child who was receiving supplemental security income benefits on August 22, 1996 and who but for the change in definition of childhood disability established by PL 104-193 would continue to receive SSI shall continue to meet the Medicaid definition of disability for the period of time established for that child by the Cabinet for Families and Children Department for Social Insurance Medical Review Team. If a redetermination is necessary, and in accordance with 904 KAR 2:470, the Medical Review Team shall use the definition of childhood disability effective on August 22, 1996.

LARRY A. MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998
FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: Approximately 80,500

individuals eligible for Medicare; and 3166 children who previously received SSI.

(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. All funds appropriated for the provisions in this regulation will be provided by the Health Care Financing Administration.

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: We will need to accumulate data regarding the number of qualified individuals served and the amount of federal funds expended.

(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 regarding qualified individuals (QI's): 100% federal funds equaling \$3,970,000. Funds for continued eligibility for the 3166 children losing SSI eligibility and the 40 aliens have been included in the budget since they were already considered as Medicaid eligibles.

(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: This regulation will allow children who have lost their SSI eligibility to continue receiving Medicaid, and those elderly and disabled individuals whose income meets the criteria will be able to access Medicare benefits.

(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 preventing access to Medicaid and Medicare benefits by those who are deemed eligible through the provisions included in this administrative regulation.

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

(a) Necessity of proposed regulation if in conflict:

(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. No

3. State the aspect or service of local government to which this administrative regulation relates. None

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. None

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. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

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

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

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

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

STATEMENT OF EMERGENCY 907 KAR 1:640E

This emergency administrative regulation is being promulgated to implement the following changes mandated by PL 105-33:

(a) The definition of AFDC is being changed to reflect the provisions of PL 104-193.

(b) Income limits are established for the qualified individuals. Group one is limited to income greater than 120 percent and less than or equal to 135 percent of the federal poverty level. Group two is limited to income greater than 135 percent and less than or equal to 175 percent of the federal poverty level.

(c) Children as established in 42 USC 1396a(a) who lost SSI due to the change in definition of childhood disability mandated by PL 104-193 are limited to the SSI income limit.

(d) Persons with hemophilia who received a class action settlement in an action titled "Factor VIII or IX Concentrate Blood Products Litigation" as established in 42 CFR 435.122 shall be limited to the SSI income limit.

(e) Income received from the class action suit referenced in "D"

above and income received from the settlement of the class action suit titled *Susan Walker v. Bayer Corporation* shall be excluded as income in a Medicaid determination, as established in 42 CFR 435.122.

This action must be taken on an emergency basis to assure continued Medicaid coverage for the disabled individuals and continued Medicare coverage for the elderly and disabled adults. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients by preventing access by the affected individuals to the Medicaid and Medicare Programs. Delays in promulgating this administrative regulation were due to a delay in receiving clarifications from the Health Care Financing Administration. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:640E. Income standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, d, EO 96-862

EFFECTIVE: April 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, and disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Dependent child" means a child who is deprived of parental support due to death, incapacity, or absence of a parent and is under the age of eighteen (18) or under age nineteen (19) if in high school or the same level of vocational or training school and expected to graduate before or during the month of their 19th birthday.

(4) "Incapacity" means any condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(5) "Income" means money received from statutory benefits (Social Security, Veteran's Administration pension, black lung benefits, railroad retirement benefits, etc.), pension plans, rental property, investments, or wages for labor or services.

(6) "Minor parent" means a parent under the age of twenty-one (21).

(7) "Lump sum income" means money received at one (1) time which is normally considered as income, e.g., accumulated back payments from Social Security, unemployment insurance and workman's compensation, backpay from employment, money received from insurance settlements, gifts, inheritances, lottery winnings, noncontinuing proceeds from bankruptcy proceedings, monies

withdrawn from IRA's, KEOGH plans, deferred compensation, tax deferred retirement plans, and other tax deferred assets.

(8) "SSI" means supplemental security income program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, income shall be determined by comparing adjusted income as defined in Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$ 2,600	\$ 217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for pregnant women, infants and children eligible pursuant to 42 USC 1396a(e):

(a) Pregnant women and children under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines.

(b) Children age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines.

(c) Children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines.

(d) Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall not become eligible by spending down (described in Section 9 of this administrative regulation) to the official poverty guidelines;

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income limits and provisions shall be applicable for determinations of eligibility of qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, [and] qualified disabled working individuals, and qualified individuals.

(a) Qualified Medicare beneficiaries shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) Specified low-income Medicare beneficiaries shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) Qualified individuals are divided into two (2) groups:

1. Group one shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

2. Group two shall have income greater than 135 percent of the official poverty income guidelines but less than or equal to 175 percent of the official poverty income guidelines.

(d) Qualified disabled working individuals shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) The official poverty income guidelines as referenced in this section shall be those promulgated by the Department of Health and Human Services, United States Government, and revised annually,

and the updated official poverty guidelines to be used for a year shall be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

(5) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 USC 1396a(a)(10);

(b) A person with hemophilia who received a class action settlement as established in 42 CFR 435.122.

(6) Income shall be limited to the allowable amounts for the State Supplementation Program for pass through recipient as established in 42 CFR 435.135.

Section 3. Income Disregards. In comparing income with the scale as contained in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In AFDC related Medicaid cases, the standard work related expenses of adult members and out-of-school youth shall be deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. All earnings of an in-school child shall be disregarded.

(2) In AFDC related Medicaid cases, child care as a work expense shall be allowed for child(ren) who are living in the home of the caretaker and is related to the caretaker in the appropriate degree as defined by the AFDC Program for full-time and part-time employment. The dependent child care work expense shall be deducted after all other disregards have been applied. The child care work expense allowed shall not exceed, per month, \$200 for full-time or part-time employment per child under age two (2), and \$175 for full-time employment or \$150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(3) In ABD Medicaid cases, income disregards shall be those applicable in the federal SSI program.

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time.

(2) An amount equal to the appropriate income limitations scale as described in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the Medicaid eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(3) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(4) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent or grandparent receiving SSI.

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. (1) For AFDC related Medicaid

cases, lump sum income shall be divided by the medically needy income level and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(2) For individuals eligible under the federal poverty level standards specified in Section 2(2)(a), (b) and (c) of this administrative regulation, lump sum income shall be divided by the appropriate standard for the eligible group and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(3) For ABD Medicaid cases, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) Payments or benefits from federal statutes, other than SSI benefits, shall be excluded from consideration (as income) if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) Federal Republic of Germany reparation payments shall not be considered available in the eligibility and posteligibility treatment of income of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(5) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, [and] qualified disabled working individuals and qualified individuals until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government, is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) Veterans in a nursing facility who are receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the ninety (90) dollar payment shall be considered as income in the posteligibility determination process.

(8) Austrian Social Insurance payments based, in whole or in part, on wage credits granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(9) Individual Retirement Accounts, Keogh plans and other tax deferred assets shall be excluded as income until withdrawn.

(10) Disaster relief assistance shall be excluded as income.

(11) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one third (1/3) of the remainder) shall not be allowed in determining eligibility for Medicaid only.

(12) In accordance with 42 CFR 435.122 and Section 4735 of PL 105-33 any payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(13) In accordance with 42 CFR 435.122 any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

Section 7. Consideration of State Supplementary Payments. For

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an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard (contained in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1) Increases in Social Security payments due to cost of living increases but for which the individual would be eligible for SSI benefits or state supplementary payments shall be disregarded in determining eligibility for Medicaid benefits; these individuals shall remain eligible for the full scope of program benefits with no spend-down requirements (described in Section 9 of this administrative regulation).

(2) For individuals who applied by July 1, 1988, the additional amount specified in 42 USC 1383c(b) shall be disregarded, i.e., that amount of Social Security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) these individuals would be eligible for federal SSI benefits.

Section 9. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) Individuals with income in excess of the basic maintenance scale as contained in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

(4) The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998

FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals eligible for Medicare benefits, and 3166 children who have lost SSI eligibility.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None. All funds appropriated for provisions regarding the qualified individuals are federal funds. The provisions covering the SSI children, persons with hemophilia and those persons who received income received from the settlement of the class action suit titled Susan Walker v. Bayer Corporation are budget neutral since those persons have been included in the budget as eligible individuals.

(b) Reporting and paperwork requirements: The department will need to gather data regarding federal funds expended and the number of new individuals served.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds equaling \$3,970,000.

(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: Citizens with income greater than 120% and less than or equal to 175% of the federal poverty level will receive assistance paying Part B premiums; thereby providing them access to the Medicare Program.

(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 individuals who are eligible but are unable to access to the Medicare Program and by preventing access to the Medicaid Program by children who have lost SSI eligibility.

(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. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year

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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. None

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. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

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

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

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

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

STATEMENT OF EMERGENCY 907 KAR 1:645E

This emergency administrative regulation is being promulgated to implement the following changes mandated by the Balanced Budget Act of 1997 (PL 105-33):

(a) Provide Medicaid coverage to children who were receiving supplemental security income on August 22, 1996, and but for the change in definition of childhood disability mandated by PL 104-193 would still be receiving supplemental security income;

(b) Provide payment of the Part B Medicare premium for individuals with income greater than 120 percent of the federal poverty level and equal to or less than 135 percent of the federal poverty level; and

(c) Provide payment of that part of the Medicare Part B premium which is attributable to home health costs for those individuals with income greater than 135 percent and less than or equal to 175 percent of the federal poverty level.

This action must be taken on an emergency basis to assure continued Medicaid coverage for the disabled children and continued Medicare coverage for the elderly and disabled adults. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health or welfare of Medicaid recipients due to their inability to access the Medicaid or Medicare benefits to which they are entitled. A delay in promulgating this administrative regulation was as a result of a delay in receiving clarifications from the Health Care Financing Administration. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:645E. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 CFR Part 435, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520, EO 96-862
EFFECTIVE: April 6, 1998

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 any [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 resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "K-TAP" is defined in 907 KAR 1:011.

(3) "Poverty level guidelines" means the official poverty income guidelines promulgated by the Department of Health and Human Services, United States government, pursuant to the provisions of 42 USC 9902(2).

(4) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(5) "Resources" mean cash money and other personal property or real property that an individual owns; has the right, authority or power to convert to cash; and is not legally restricted for support and maintenance.

(6) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy as defined in 907 KAR 1:011, the upper limit for resources for a family size of one (1) and for family size of two (2) shall be \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) born after September 30, 1983 who is eligible under federal poverty level guidelines.

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, a [or] qualified working disabled individual, or a qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient as defined in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, and a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011, resources shall be limited to the allowable amounts for the SSI Program.

Section 3. Resource Exclusions. (1) A homestead, occupied or abandoned, household, personal effects, and farm equipment without limitation on value shall be excluded from consideration.

(2) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be

excluded from consideration. The value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of a family with a child, and which is used in a trade or business or by the individual or member of the family group as an employee shall be excluded from consideration as a resource.

(3) For a family related Medicaid case, the value of otherwise countable real property (whether income producing or nonincome producing) shall be excluded from consideration for six (6) months if the individual can demonstrate that he is trying to dispose of the property properly. An additional three (3) months shall be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) For an ABD Medicaid case, real property or nonreal property shall be excluded from consideration if it can be demonstrated that there was a reasonable effort to sell the property at fair market value within a year of application for Medicaid.

(5)(a) Except as provided in paragraph (b) of this subsection, equity of \$4,500 in an automobile shall be excluded from consideration.

(b) If an automobile is used for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use by an individual with a disability the total value of the automobile shall be excluded.

(6) A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, or other identifiable fund shall be excluded from consideration.

(a) The cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(7) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(8) For an ABD Medicaid case, proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home. For a family related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(9) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(10) A payment or benefit from a federal statute, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(11) Disaster relief assistance shall be excluded from consideration.

(12) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(13) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(14) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(15) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(16) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(17) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(18) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(19) An Austrian social insurance payment based on a wage credit granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(20) An individual retirement account, Keogh plan or other tax deferred asset shall be excluded as a resource until withdrawn.

(21) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(22) A payment received from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

Section 4. Resource Exemptions. A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998

FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals who are eligible for Medicare and 3166 children who have lost eligibility for SSI benefits.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

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. Funds expended for the provision covering the qualified individuals are 100% federal funds. Other individuals identified in this regulation are currently included as eligible individuals; therefore, their coverage is budget neutral.
 - (b) Reporting and paperwork requirements: None
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: *100% Federal funds equaling \$3,970,000.
 - (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: None
 - (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 individuals by preventing access to the Medicare Program and by preventing children who have lost SSI eligibility from having access to the Medicaid Program.
 - (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. No
3. State the aspect or service of local government to which this administrative regulation relates. None
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. None

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. Pursuant to PL 105-33, Kentucky must also provide payment of Medicare Part B premiums for individuals who meet the criteria established in this regulation.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY
908 KAR 2:210E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)1. This administrative regulation is necessary to protect the victims of domestic violence. It establishes standards for certifying mental health professionals who provide treatment services to perpetrators of spousal battery or other domestic violence pursuant to court orders. There is a danger that professionals without requisite specialized knowledge, training, or experience may provide inappropriate domestic violence treatment services. Such services are likely to be ineffective and thereby create a continuing, or in some cases enhanced, danger for victims of domestic violence. Failure to implement this administrative regulation immediately would result in imminent danger of physical and emotional injury to the victims and potential victims of ineffectively treated perpetrators of domestic violence. This represents an imminent threat to the health and safety of citizens of the Commonwealth. An ordinary administrative regulation will be filed to replace this emergency administrative regulation to provide for continuing effect.

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

CABINET FOR HEALTH SERVICES
Department for Mental Health/Mental Retardation Services

908 KAR 2:210E. Domestic violence offender treatment certification standards.

RELATES TO: KRS 403.715 to 403.785
STATUTORY AUTHORITY: KRS 403.7505
EFFECTIVE: April 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for Health Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders. The purpose of this administrative regulation is to establish provider certification requirements and standards for services. This administrative regulation is necessary to assure the quality and effectiveness of court-ordered domestic violence treatment services.

Section 1. Definitions. (1) "Assessment" means the evaluation of the offender's characteristics, history of abusive behavior, risk of harm to self and others, and capacity to benefit from treatment.

(2) "Associate provider" means an individual that has been certified to provide services in accordance with the requirements of this administrative regulation only under the direct supervision of an autonomous provider.

(3) "Autonomous provider" means a licensed or certified mental health professional that has been certified for unsupervised clinical practice in a domestic violence program.

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

(5) "Client" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403, who has met admission criteria for a domestic violence offender treatment program and who has agreed to participate in treatment services.

(6) "Court-referred" means a referral by any district, family or circuit court of the Commonwealth.

(7) "Domestic violence" means any act or threat of physical or sexual assault or abuse; psychological or emotional abuse; or the destruction of property or pets intended to illicit fear in the victim. It includes criminal offenses against a victim and violations of emergency protective orders and domestic violence orders.

(8) "Offender" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403.

(9) "Program" means the services provided in accordance with the requirements of this administrative regulation to offenders who have been referred by a court for assessment or treatment related to domestic violence.

(10) "Provider" means an associate provider or an autonomous provider.

(11) "Screening" means the actions taken by associate or autonomous providers to determine an offender's eligibility for admission to the program.

(12) "Treatment" means counseling and educational services that focus on the cessation of violence by an offender. Treatment includes individual and group services using a comprehensive curriculum of content relating to domestic violence.

Section 2. Certification Procedures. (1) The cabinet shall certify an individual as an associate provider or an autonomous provider if:

(a) The applicant meets the applicable qualifications specified in Section 4 of this administrative regulation; and

(b) The cabinet has not previously revoked the certification of the applicant; or

(c) If an applicant that requests certification as an autonomous provider meets all the requirements specified in Section 4 of this administrative regulation except those in Section 4(2)(a) or (e) of this administrative regulation and requests certification before January 1, 1999.

(2) An individual may apply to be certified as an associate provider or an autonomous provider by submitting:

(a) A written request for certification to the cabinet; and

(b) Documentary evidence of qualifications.

(3) A request for certification shall be submitted to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health.

(4) The cabinet may determine that a request is incomplete if:

(a) The documentation of qualifications is insufficient to meet the applicable qualifications; or

(b) The cabinet can not verify the authenticity of the documentation of qualifications.

(5) If the cabinet determines that a request is incomplete it shall return the request to the sender and specify additional documentation

that is required or the documentation that cannot be verified.

(6) The cabinet shall approve or deny the request for certification in writing no later than sixty (60) days after receiving a complete request for certification.

(7) Certification shall be effective for two (2) years.

(8) The cabinet shall renew the certification of an associate provider or an autonomous provider upon request if the provider submits documentation of completion of at least eight (8) hours per year of continuing education related to domestic violence.

Section 3. Denial or Revocation of Certification. (1) The cabinet may deny a request for certification or revoke the certification of a provider if the cabinet determines that the provider:

(a) Has been convicted of a criminal offense including misdemeanors if the crime is against persons; or

(b) A domestic violence protective order has been issued against the applicant or provider within the previous two (2) years; or

(c) The provider has an alcohol or other drug abuse problem as defined in KRS 222.005; or

(d) An action has been taken against any licensure or certification held by the applicant or provider at any time in the past two (2) years; or

(e) Has provided domestic violence offender assessment or treatment services without supervision if supervision is required by Section 5(1) or (2) of this administrative regulation; or

(f) Has falsified any information in a request for certification; or

(g) Has failed to meet the requirements for maintenance of certification set forth in Section 2(8) of this administrative regulation; or

(h) Has failed to implement a corrective action plan imposed by the cabinet in accordance with Section 12(4)(a) or (b) of this administrative regulation.

(2) An applicant or a provider may appeal a denial of a request for certification or a revocation of certification. An appeal shall:

(a) Be submitted in writing to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health; and

(b) Specify the reason the provider believes the denial or revocation is unwarranted; and

(c) May include information or documentation supporting the appellant's position.

(3) If an applicant or a provider appeals a certification decision the cabinet shall appoint a hearing officer and conduct an administrative hearing in accordance with KRS Chapter 13B.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider are:

(a) A bachelors degree from an accredited university or college in a mental health related discipline; and

(b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including:

1. Characteristics and dynamics of domestic violence;

2. Social systems;

3. Law enforcement;

4. Criminal justice;

5. Assessment and treatment of offenders and victims; and

6. Relevant protective services available to victims; and

(c) Four (4) years of full-time post bachelors degree work experience totaling at least 8,000 hours that may include general clinical experience and direct case experience related to domestic violence; and

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation.

(2) The qualifications of an autonomous provider are:

(a) An advanced degree from an accredited university or college in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky; and

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology;
2. Social work;
3. Medicine if board eligible in psychiatry and neurology;
4. Psychiatric nursing;
5. Marriage and family therapy;
6. Professional counseling; or
7. Art therapy; and

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of one (1) of the licensed or certified professionals specified in paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; and

(d) Completion of the training specified in subsection (1)(b) of this section; and

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from representatives of two (2) victims advocate agencies.

Section 5. Scope of Practice and Supervision Requirements. (1) An associate provider may under the supervision of an autonomous provider:

(a) Screen, assess, plan and provide treatment services under the supervision of an autonomous provider to offenders and clients of a program; and

(b) Consult with the courts, prosecutors, law enforcement, other agencies, mental health providers and others regarding the assessment or treatment needs of clients; and

(c) Provide victim services.

(2) An associate provider that provides the services specified in subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision dedicated to case discussion, supervised readings, skill building, and review of audio or video tapes of actual clinical practice provided by a certified autonomous provider.

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation services independently and supervise associate providers if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a mental health licensing board or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises associate providers shall:

(a) Provide supervisees the supervision required by subsection (2) of this section; and

(b) Directly observe the supervisee's practice in person or through video or audio tapes of the supervisee's clinical practice; and

(c) Assure that supervisees provide services in accordance with the all the provisions of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims:

(a) Domestic violence constitutes a health hazard to victims who may experience short- and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in its various forms is criminal behavior.

(c) Services shall be designed to enhance and promote the safety

of identified and identifiable victims including spouses, live-in partners, children and other family members.

(d) Victims are not responsible for the violent behavior of offenders and shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorders, or cultural background are not explanatory causes of the offenses but can influence the offender's behavior.

(f) Cooperation and service coordination between law enforcement, the courts, probation and parole agencies, the Department for Social Services, spouse abuse centers and other victim advocates, chemical dependency professionals, and other mental health professionals is necessary to assure effective treatment and the safety of victims and potential victims.

(2) A provider shall document all services provided to offenders that receive domestic violence services pursuant to a referral by a court. Service records shall reflect that the services have been provided in accordance with subsection (1) of this section.

(3) An offender may consent or refuse to receive domestic violence services provided in accordance with the requirements of this administrative regulation at any time.

(4) A provider shall treat offenders with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(5) An offender shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet and a provider shall not take any adverse action against an offender that makes a complaint.

(6) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding prior to making a referral for treatment that a client is indigent, a court may order a client to perform community service in lieu of payment of a fee.

(7) A provider shall comply with any and all federal laws pertaining to research with human subjects and shall protect the privacy of any clients who give consent to participate in any provider-sponsored research activities.

(8) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(9) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

(10) Victims may participate in screening, assessment or treatment services subject to the provisions of this section if an offender and the victim consents to a victim's participation.

Section 7. Victim Services. (1) If an offender consents to a victim's participation in assessment or treatment services a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program; and

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the violence; and

(c) Interview victims who consent to participate in an assessment of the offender; and

(d) Provide the victim information about the program, its possible benefits, the limitations of services, and the degree to which the offender's participation may or may not result in increased safety for the victim;

(e) Educate the victim about community services which are available to assist in meeting current or future protection needs of the victim and family members.

(2) Providers shall document their efforts to contact victims.

(3) Victim interviews shall not be conducted in the presence of the offender.

(4) If a victim does not consent to participate, or withdraws consent to participate, or refuses to participate or provide information, a provider shall not attempt to coerce or persuade the victim to participate.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria which may include an offender's admission of responsibility for a domestic violence related offense and may not be based solely on an offender's inability to pay for services; and

(b) Procedures for acceptance of referrals of offenders from a court following charges of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS Chapter 403; and

(c) Notification of the referring court if an offender is determined not to be eligible for a provider's services including the reasons therefore and any referrals made in accordance with Section 9(2) of this administrative regulation no later than five (5) days after the decision.

(2) An offender shall be provided with all of the following information prior to receiving assessment or treatment services:

(a) The limitations on confidentiality including the duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400 and the fact that information disclosed to the provider or other clients may be used against them in civil or criminal proceedings;

(b) The relationship of the provider to the referring court including duties to make reports pertaining to the client to the courts, prosecutors, probation and parole officers, law enforcement, the victim, and any other named party or agency that might be involved in the coordination of the client's services;

(c) The offender's responsibility for paying fees for services and policies regarding noncompliance with payment of fees;

(d) The expected length of treatment participation and the terms for discharge from the program including grounds for involuntary discharge;

(e) An explanation of the requirements of Section 6 of this administrative regulation;

(f) An explanation of the rights set forth in subsection (3) of this section;

(g) A description of the services that will be provided including requirements for participation; and

(h) Procedures for victim participation in screening, admission and treatment services.

(3) If, after receiving the information specified in subsection (1) of this section, an offender consents to participate in domestic violence services, the provider shall determine if a victim shall participate in assessment or treatment services in accordance with Section 6 of this administrative regulation.

Section 9. Assessment and Admission Procedures. (1) If an offender is determined to be eligible for domestic violence services offered by the provider an assessment of the offender's treatment needs shall be performed. The assessment shall include consideration of the offender's:

(a) History of abusive behavior including degree of harm and type of violent conduct;

(b) Criminal history;

(c) Risk of harm to self and others;

(d) Medical history;

(e) History of mental or emotional disorder;

(f) Current mental status;

(g) The presence of any co-occurring disorders such as mental illness or substance abuse or dependence; and

(h) The offender's ability to benefit from English language services and from group settings; and

(i) May include a review any relevant public records, police reports and other available collateral sources of information on the

offender.

(2) A provider may interview a victim subject to the provisions of Section 6 of this administrative regulation and consider information provided by a victim in the assessment if an offender consents for a victim to participate in an assessment.

(3) If, upon assessment, a provider determines that the offender is unlikely to benefit from services due to a high risk of lethality or other factors, a provider shall refer the offender to services more likely to benefit the offender.

(4) A provider may refer an offender to mental health or substance abuse treatment services as a prerequisite for admission or completion of a domestic violence offender treatment program.

(5) A provider shall notify the referring court no later than five (5) days after making a determination based on an assessment if the offender shall be admitted or not, and referrals made, if any.

(6) An offender shall be admitted for domestic violence treatment upon providing a written consent for treatment and agreeing in writing to comply with all program rules and guidelines and providing written authorization for a provider to release information to all the referring or service coordinating parties identified above.

Section 10. Treatment Procedures. (1) A provider shall make individual and group services available to clients at least once weekly.

(2) Clients shall be required to participate in group services at least once per week unless the program does not have a sufficient number of clients to form a group.

(3) A program shall offer separate groups for male and female offenders.

(a) Group services may involve a minimum of two (2) clients but shall not exceed twelve (12) clients at any time unless two (2) providers facilitate each group session.

(b) If two (2) providers facilitate a group, it may include a total of fifteen (15) participants.

(4) Group services shall be scheduled in at least one and one-half (1 1/2) hour sessions.

(5) A client shall participate for a minimum period of twenty (20) weeks and a recommended period of fifty (50) weeks.

(6) Noncourt-referred clients may participate in group services with court-referred clients.

(7) The provider shall establish a core curriculum for group participation that covers the essential features of domestic violence including:

(a) Definition of domestic violence in its various forms, including physical, sexual, psychological and environmental abuse;

(b) Exploration of the effects of domestic violence on victims and witnesses;

(c) Discussion of the legal dimensions of domestic violence;

(d) Description of the cycle of violence and other dynamics of domestic violence;

(e) Instruction of clients about their responsibility for the domestic violence behavior;

(f) Confrontation of the client's use of power, control and coercion in intimate relationships;

(g) Confrontation of rigid sex role stereotypes;

(h) Challenge of the client's pattern of aggressive reactions in conflict situations with victims;

(i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;

(j) Exploration of constructive and nonviolent methods for expressing anger and resolving conflict in relationships, including the use of "time outs", stress management, anger reduction and constructive verbal methods for resolving conflict;

(k) Encouragement of the client's contribution to restitution to the victim and family members;

(l) Development of relapse prevention techniques; and

(m) Promotion of aftercare services where indicated.

(8) If group services for female offenders are offered, the

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curriculum required by subsection (7) of this section may be amended to relate specifically to female offenders.

(9) A provider shall execute all duties to warn and protect if intended victims have been threatened by a client of the program under the provisions of KRS 202A.400.

(10) A provider shall notify the victim of the discharge or termination of a client.

(11) A provider shall not offer or provide marital counseling or therapy to any client or victim until the client has successfully completed the program and has demonstrated at least six (6) months of nonviolent behavior in the relationship.

(12) A provider shall not offer or provide marital counseling or therapy to any client or victim if there is a foreseeable risk of harm to the victim resulting from the marital services or if a provider believes that the victim may be agreeing to participate because of coercion or threat from the offender.

Section 11. Involuntary Discharge from a Program. (1) A provider shall dismiss from the program any offender that:

(a) Fails to attend more than ten (10) percent of scheduled appointments; or

(b) Fails to actively participate in services or complete assignments; or

(c) Fails to assume financial responsibility for services as ordered by the court; or

(d) Violates any provision of a court order; or

(e) Reports a reoccurrence of domestic violence.

(2) A provider shall notify the referring court no later than five (5) days after a decision to discharge an offender from the program and shall specify the reason for the discharge.

Section 12. Monitoring. (1) The cabinet shall:

(a) Investigate signed written complaints received about providers if the complaints allege a failure to comply with the provisions of this administrative regulation; and

(b) Refer any complaints against providers which relate to unethical practice or practice which may be outside the practice of a provider to the appropriate licensure or certification board.

(2) The cabinet may evaluate a certified provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Monitoring by cabinet staff may include any of the following activities:

(a) Interviewing offenders or victims if they consent to be interviewed;

(b) Reviewing service records maintained by providers on offenders that have been referred by a court in accordance with this administrative regulation;

(c) Direct observation of services provided to offenders unless an offender objects to being observed;

(d) Interviewing judicial, correctional, or police officials, and other agency personnel that interact regularly with a certified provider in relation to offender services.

(4) If the cabinet determines that a certified provider has failed to comply with provisions of this administrative regulation the cabinet shall notify the provider in writing of its determination and may:

(a) Require the provider to submit a corrective action plan; or

(b) Impose a corrective action plan upon the provider; or

(c) Revoke a provider's certification in accordance with Section 3 of this administrative regulation.

(5) The cabinet shall notify an autonomous provider that supervises an associate provider if it determines that an associate provider has failed to adhere to the provisions of this administrative regulation and the autonomous provider shall be responsible to assure that corrective action is taken.

ELIZABETH R. WACHTEL, Commissioner
JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 2, 1998

FILED WITH LRC: April 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rashmi Adi

(1) Type and number of entities affected: This regulation will affect the 59 judicial districts 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: 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: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No new revenue is needed. Monitoring of compliance with the regulation will be carried out by existing personnel.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: N/A. No public hearing has been held yet.

(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: No alternative methods were considered. Treatment of perpetrators of domestic violence requires specialized expertise. The only method the department is authorized to use for establishing standards is the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(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 implementation of this regulation will protect victims of domestic violence who are currently at risk of serious harm by ineffectively treated perpetrators.

(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: Failure to implement this regulation immediately will result in imminent danger to the health and safety of victims and potential victims of ineffectively treated perpetrators of domestic violence.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied to standards for certification. Standards for certification as an associate requires less education training and experience than that required for certifica-

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tion as an autonomous provider. In addition, requirements for supervision are imposed for associate providers and not for autonomous providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
None
2. State compliance standards. None applicable.
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 15, 1998)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 [59] CFR Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to set waterfowl season dates and limits. This administrative regulation is necessary to set limits and dates within federal waterfowl hunting frameworks established by 50 CFR Part 20. This administrative regulation imposes a shorter season in the Western Goose Zone [Ballard Reporting Area] than permitted by federal frameworks in an effort to build Canada goose populations in that portion of the state.

Section 1. (1) Except as authorized by 301 KAR 2:222, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) [Zone Descriptions:] Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser [Ducks, Coots and Mergansers]. (1) Season dates. Statewide, November 1 through November 2 and November 22 through January 18. [~~28 through December 1 and December 5 through January 19.~~]

(2) Gun and archery daily limits.

(a) Six (6) [~~Five (5)~~] ducks, which shall not include [~~no~~] more than:

1. Four (4) mallards, which shall not include [~~no~~] more than two (2) hen mallards. [~~one (1) hen mallard.~~]

2. Two (2) wood ducks.

3. One (1) black duck.

4. Two (2) redheads.

5. Three (3) pintails. [~~One (1) pintail.~~]

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include [~~no~~] more than one (1) hooded merganser.

(d) The possession limits shall be double the daily limit. [~~Possession limits are double daily limits.~~]

(3) Youth hunt:

(a) Season date: October 12.

(b) Bag limits: as specified in subsection (2) of this section.

(c) A person sixteen (16) years old or older shall not hunt.

(d) A person over the age of eighteen (18) shall accompany the juvenile hunter.

(e) A person accompanying a juvenile hunter shall:

1. Not hunt.

2. Not be required to possess a hunting license or Kentucky waterfowl permit.

3. Remain in a position to take immediate control of the juvenile's firearm.}]

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: [(a)] November 27 [28] through:

(a) January 20 in the Ballard Reporting Area;

(b) January 31 in the remainder of the state. [November 28 through January 31 in:

1. ~~The remainder of the Western Goose Zone;~~

2. ~~The Pennyroyal/Coalfield Goose Zone; and~~

3. ~~The Eastern Goose Zone.]~~

(2) Snow goose and Ross' goose season dates.

(a) Ballard Reporting Area: November 27 through January 20 and February 14 through March 10.

(b) Remainder of state: November 27 through March 10. [~~Pennyroyal/Coalfield and Eastern Goose Zones: November 28 through January 31.~~]

(b) ~~Western Goose Zone:~~

1. ~~Ballard Reporting Area: November 28 through January 20 and February 15 through March 10.~~

2. ~~That portion of Fulton County in the Western Goose Zone: November 28 through March 10.~~

3. ~~The remainder of the Western Goose Zone: November 28 through January 31 and February 15 through March 10.]~~

(c) The reporting requirements specified in 301 KAR 2:223 shall not apply when a Canada goose season is not open. [~~during the February 15-March 10 portion of the season.~~]

(3) Canada goose season dates.

(a) Eastern Goose Zone: December 13 through January 31.

(b) Pennyroyal/Coalfield Goose Zone: December 28 through January 31. [~~16 through January 19.~~]

(c) Western Goose Zone: December 6 [5] through:

1. January 20 in the Ballard Reporting Area;

2. February 15 in the portion of Fulton County in the Western Goose Zone;

3. January 31 in the remainder of the Western Goose Zone; unless [~~4.~~] a quota [~~The quotas~~] specified in Section 6 [7] of this administrative regulation is [~~are~~] reached.

(d) West-Central and Northeast Special Hunt zones: January 23 [~~11~~] through January 31 [~~19~~].

(4) A person shall not goose hunt [geese] in:

(a) Breathitt, Knott, and Perry counties.

(b) The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake.

(c) McCreary County east of US 27.

(d) Cave Run Lake and the public land [lands] inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(5) [~~A person shall not hunt Canada geese in Christian County north of Highway 68/80.~~]

(5) Daily limits.

(a) [~~Except in the Northeast Special Hunt Zone, ten (10) geese, which shall include no more than:~~]

1. Two (2) Canada geese.

(b) [~~2.~~] Two (2) white-fronted geese.

(c) [~~3.~~] Two (2) brant.

(d) Ten (10) snow geese.

[(b) In the Northeast Special Hunt Zone, two (2) Canada geese. A person shall not take snow geese, brant or white-fronted geese.]

(6) The possession limit shall be double the daily limit. [(6) Possession limits are double daily limits.]

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Section 4. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) 2 p.m. in the Northeast Special Hunt Zone; or
- (2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222. [(1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.
- (2) In the Northeast Special Hunt Zone, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area. (1) Ducks, coots and mergansers:

- (a) December 5 through January 18 or until the Ballard Reporting Area goose quota is reached.
- (b) During waterfowl hunts occurring before October 15.
- (2) Geese, December 5 through January 18 or until the Ballard Reporting Area quota is reached.
- (3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.
- (4) Shooting hours: one-half (1/2) hour before sunrise until noon.
- (5) A waterfowl hunter:
 - (a) Shall apply in advance as stipulated in 301 KAR 2:222.
 - (b) Shall not have more than ten (10) shotgun shells in his possession.
 - (c) Shall case his gun while using department-supplied transportation to and from blinds.
 - (d) Shall be accompanied by an adult if under eighteen (18) years old.
 - (6) More than four (4) person shall not occupy a blind.
 - (7) A person shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.]

Section 5. [6:] Falconry Waterfowl Season and Limits. (1) Season dates:

- (a) Snow geese and Ross' geese: November 24 through March 10;
- (b) Other waterfowl: November 5 through January 31. [statewide, November 5 through January 31 for ducks, coots, mergansers, Canada geese, and except in the Western Goose Zone, other geese.
- (2) For other geese in the Western Goose Zone, November 24 through November 27 and during the open-gun and archery season.]
- (2) [(3)] Daily limit: three (3) waterfowl.
- (3) [(4)] Possession limit: six (6) waterfowl.

Section 6. [7:] Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 8,000 Canada geese in the Ballard Reporting Area before January 20, goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 3,135 [3,990] Canada geese in the Henderson-Union Reporting Area before January 31:

(a) Goose hunting shall cease in the Henderson-Union Reporting Area.

(b) In the counties associated with the Henderson-Union Reporting Area, goose hunting shall cease:

- 1. Seven (7) days later; or
- 2. On the scheduled closing date, whichever occurs first.

(3) If hunters reach a quota of 16,500 [21,000] Canada geese in the Western Goose Zone before January 31, goose hunting shall cease in the Western Goose Zone.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

(5) A closure [Closures as] stipulated in this section shall not apply after January 31 [to the February 15-March 10 portion of the snow goose season].

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
DOUGLAS SCOTT PORTER, Assistant Attorney General
APPROVED BY AGENCY: August 21, 1997
FILED WITH LRC: February 9, 1997 at noon

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, April 15, 1998)

301 KAR 2:222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 [59] CFR Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. Waterfowl seasons in the Ballard Wildlife Management Area, Cane Creek Wildlife Management Area, Cumberland Lake Wildlife Management Area, Cyprus-AMAX Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices. [Selected wildlife management areas have shorter seasons or more restrictive shooting hours than allowed by federal law to optimize public use within sound waterfowl conservation practices.]

Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure.
- (b) A pit.
- (c) A boat.

(2) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind.

(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(4) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(5) "Waterfowl" is defined by KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) [Shotgun shells] Containing shot:

(a) Made of lead [shot]; [or]

(b) [Shot] Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) [-

(2) [Shot] Larger than size "T."

(3) [Shotshells longer than three and one-half (3-1/2) inches.]

Section 3. In [Requirements for waterfowl hunters in] the Ballard Reporting Area, as described in 301 KAR 2:224:

(1) A waterfowl hunter shall:

(a) [Shall] Hunt from a blind unless hunting in flooded, standing timber.

(b) [Shall] Not hunt from or establish a blind:

- 1. Within 100 yards of another blind; or
- 2. Within fifty (50) yards of a property line.

(c) [Shall] Not possess more than one (1) shotgun while in a

blind.

(2) More than five (5) persons shall not occupy a blind.

(3) The requirements of subsection (1) of this section shall not apply ~~after Canada goose season closes, [during the February 15-March 10 portion of the snow-goose season.]~~

Section 4. ~~[Blind Restrictions on Wildlife Management Areas:]~~ (1) Except as specified in this section or in Section 5 of this administrative regulation, on a wildlife management area [areas]:

(a) A waterfowl hunter shall not establish or hunt from:

1. A permanent blind.
2. A blind within 200 yards of:
 - a. Another blind; or
 - b. A waterfowl refuge.

(b) A person shall not hunt in a designated recreation area [areas] or access point [points].

(c) More than four (4) persons shall not occupy a blind.

(d) A hunter shall remove decoys and personal effects from the wildlife management area daily.

(2) A person wishing to establish a permanent blind [blinds] on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake or [and] Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for a blind permit [permits] on the Barkley, Barren, Green, Paintsville, or [and] Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) The holder of a blind permit shall:

(a) ~~[Shall]~~ Construct his blind before November 20 or forfeit the permit.

(b) ~~[Shall]~~ Not lock a blind. [blinds.]

(c) Unless an extension of time is granted, ~~[shall]~~ remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) A blind not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to another hunter [other hunters] on a first-come, first-serve basis.

(5) A blind restriction [Blind restrictions] specified in this section shall not apply to a falconer [falconers] when a gun or archery season is [seasons are] not open.

Section 5. On a wildlife management area: [Exceptions for Wildlife Management Areas:]

(1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates.

(2) A person shall not:

(a) Hunt on an area or the portion of an area [areas or portions of areas] marked by a sign [signs] as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) A person shall not:

1. Have in his possession more than fifteen (15) shotgun shells while waterfowl hunting; or

2. Hunt past 12 noon.

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older.

(c) At Ballard Wildlife Management Area:

1. The duck, coot, and merganser season shall be:

a. December 9 through January 17; or

b. Until the Ballard Reporting Area goose quota is reached.

2. The goose season shall be:

a. December 9 through January 20; or

b. Until the Ballard Reporting Area goose quota is reached.

3. A waterfowl hunter shall not hunt on a Sunday, Monday, Christmas Day, or New Year's Day.

4. A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

b. Case his gun while using department-supplied transportation to and from a blind;

c. Be accompanied by an adult if under eighteen (18) years old; and

d. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.

(d) At Barlow Bottoms Wildlife Management Area:

1. A person shall:

a. Not hunt on a Monday or Tuesday; and

b. Check in and out daily at the designated check station during Canada goose season.

2. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.

3. At least one (1) person in a blind shall be eighteen (18) years old or older.

4. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.

5. A person shall not, on Lower Bottoms Public Waterfowl Hunting Area:

a. Hunt waterfowl except from a permanent department blind;

b. Be on the area after 1 p.m. during a waterfowl season, except as authorized by the department; and

c. Hunt waterfowl except from a blind assigned by the department during Canada goose season.

(e) Peal Public Hunt Lakes:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake;

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. On Swan Lake Unit, a person shall not hunt duck, coot, merganser, or geese other than Canadian geese except from a blind assigned by the department and unless:

a. The season for these species is open; and

b. The season for Canadian geese is also open. [On the wildlife management areas listing in this subsection:]

1. A person shall not:

a. Have in his possession more than fifteen (15) shotgun shells while waterfowl hunting; or

b. Hunt past 12 noon;

2. At least one (1) person in a blind shall be eighteen (18) years old or older.

(b) Ballard Wildlife Management Area:

1. Duck, coot and merganser season dates shall be:

a. December 9 through January 17 or until the Ballard Reporting Area goose quota is reached.

b. During a waterfowl hunt occurring before October 15.

2. Goose season dates shall be December 9 through January 20 or until the Ballard Reporting Area quota is reached.

3. A person shall not hunt waterfowl on Sundays, Mondays, Christmas Day or New Year's Day.

4. A waterfowl hunter shall:

a. Apply in advance as stipulated in Section 6 of this administra-

tive regulation:

b. Case his gun while using department-supplied transportation to and from blinds:

c. Be accompanied by an adult if under eighteen (18) years old;
d. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15;

(c) Barlow Bottoms Wildlife Management Area:

1. A person shall:

a. Not hunt Mondays or Tuesdays;

b. During Canada goose season, check in and out daily at the designated check station;

2. A department blind assignment shall be made as stipulated in Section 6 of this administrative regulation;

3. When hunting from a blind assigned by the department:

a. At least one (1) person in the blind shall be eighteen (18) years old or older;

b. The blind of a person who has not checked in by 5 a.m. shall be available to another hunter on a first come, first served basis;

(d) In addition to the requirements of paragraph (c) of this subsection, on:

1. Lower Bottoms Public Waterfowl Hunting Area a person shall not:

a. Hunt waterfowl except from a permanent department blind;

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons;

c. During Canada goose season, hunt waterfowl except from a blind assigned by the department;

2. Peal Public Hunt Lakes:

a. More than seven (7) parties shall not hunt at the same time on:

(i) Buck Lake; or

(ii) Flat Lake;

b. More than four (4) parties shall not hunt at the same time on Fish Lake;

c. More than three (3) parties shall not hunt at the same time on:

(i) First Lake; or

(ii) Second Lake;

3. Swan Lake Unit, a person shall not hunt:

a. Duck, coot, merganser or a goose other than a Canada goose unless:

(i) The season for these species is open; and

(ii) The season for Canada goose is also open;

b. Except from a blind assigned by the department;] [Seasons and hunting requirements for the Ballard Wildlife Management Area shall be as stipulated in 301 KAR 2:221.

(b) Barlow Bottoms Wildlife Management Area:

1. A person shall:

a. Not hunt waterfowl after 12 noon;

b. Not possess more than fifteen (15) shotgun shells while waterfowl hunting;

c. Not hunt Mondays through Wednesdays;

d. During Canada goose season, check in and out daily at the designated check station;

2. When hunting from blinds assigned by the department as stipulated in Section 6 of this administrative regulation:

a. At least one (1) person in the blind shall be eighteen (18) years old or older;

b. The blind of a person who has not checked in by 5 a.m. shall be available to other hunters on a first come, first served basis;

(c) Lower Bottoms Public Waterfowl Hunting Area. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not:

a. Hunt waterfowl except from permanent department blinds;

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons;

2. During Canada goose seasons, permanent department blinds

shall be allocated by advance application as specified in Section 6 of this administrative regulation;

(d) Peal Public Hunt Lakes. In addition to the requirements of paragraph (b) of this subsection:

1. More than seven (7) parties shall not hunt at the same time on:

a. Buck Lake; or

b. Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake;

3. More than three (3) parties shall not hunt at the same time on:

a. First Lake; or

b. Second Lake;

(e) Swan Lake Unit. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not hunt ducks, coots, mergansers or geese other than Canada geese unless:

a. The season for these species is open; and

b. The season for Canada geese is also open;

2. A waterfowl hunter shall use the blind assigned by the department as stipulated in Section 6 of this administrative regulation;]

(4) Barkley Lake Wildlife Management Area.

(a) A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish a permanent blind [permanent blinds] within ten (10) yards of his assigned and numbered blind marker within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area. A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area shall be closed to goose [waterfowl] hunting.

(8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 15.

(9) Cumberland Lake Wildlife Management Area. The following sections shall be [are] closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(10) [(9)] Cyprus-AMEX Wildlife Management Area shall be closed to waterfowl hunting.

(11) [(10)] Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shore [shores] of Camp Webb;

(c) From the shore [shores] of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(12) [(14)] Green River Lake Wildlife Management Area.

(a) A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

[(12) Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.]

(13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions shall be [are] closed to the public from November 1 through March 15:

1. Long Creek Pond.

2. The eastern one-third (1/3) of Smith Bay.

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions shall be [are] closed to waterfowl hunting:

1. The Environmental Education Center.

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat [boats] over a flooded portion [portions] of Land Between the Lakes when the lake level is [lake levels are] above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt [hunts].

(e) A person shall not establish or use a permanent blind [blinds]:

1. On inland areas; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) [Mill Creek Wildlife Management Area shall be closed to waterfowl hunting.]

[(16)] Nolin River Lake Wildlife Management Area. A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(16) [(17)] Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) [(18)] Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) [(19)] Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.

2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(19) [(20)] Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) [A waterfowl hunter] May use a breech-loading shotgun along the shoreline of Cave Run Lake.

(b) [A waterfowl hunter] Shall not use a breech-loading firearm [use a muzzle-loading shotgun] elsewhere on the area.

[(21) Redbird Wildlife Management Area shall be closed to waterfowl hunting.]

(20) [(22)] The main block of Robinson Forest Wildlife Manage-

ment Area shall be closed to waterfowl hunting.

(21) [(23)] Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powells Lake Unit, a waterfowl hunter:

1. Shall use one (1) of the permanent blinds provided by the department.

2. Shall remove decoys and personal effects from a blind [blinds] or the vicinity of a blind [blinds] daily.

(c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy a blind not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in his possession.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan tracts shall be closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit shall be closed to the public from October 15 through March 15.

(22) [(24)] Taylorsville Lake Wildlife Management Area.

(a) A permanent blind [Permanent blinds] may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by a sign [signs] shall be closed to the public from the Monday following the scheduled quota deer hunt through the last day of February.

(23) [(25)] Westvaco Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by a sign [signs] shall be closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

(24) [(26)] White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.

(25) [(27)] Yellowbank Wildlife Management Area. The area designated by a sign [signs] and painted boundary marker [markers] shall be closed to the public from October 15 through March 15.

Section 6. [Applying for Waterfowl Hunts:] (1) A person wishing to apply to hunt waterfowl on Ballard, Swan Lake or the Sauerheber unit of Sloughs wildlife management areas shall:

(a) Apply on a form [forms] provided by the department.

(b) Submit the completed application form [forms] before the deadline date on the form.

(2) A form which are not completed according to the instructions on the form shall be disqualified from the drawing.

(3) A person shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. Incorporation by Reference. (1) The following forms are incorporated by reference: [(5) The following application forms 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.]

(a) Sloughs Wildlife Management Area Waterfowl Hunting Application, August, 1997 [1995].

(b) Ballard Wildlife Management Area Goose Hunt Application, August, 1997 [1995].

(c) Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County, August 1997 [1996].

(2) These forms may be inspected, copied or obtained at the Department of Fish and Wildlife, #1 Game Farm Road, Frankfort, Kentucky 40601 Monday through Friday from 8 a.m. through 4:30 p.m.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1997

FILED WITH LRC: February 9, 1997 at noon

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended at ARRS, April 15, 1998)

302 KAR 20:240. Mycobacterium paratuberculosis (Johne's).

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030(3), (4), 257.110[; 257.480]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals, property and materials. This administrative regulation establishes [To provide] a voluntary procedure to prevent, control and eradicate mycobacterium paratuberculosis (Johne's) for bovine and bison.

Section 1. Definitions. (1) "Bovine" or [and] "bison" means a sexually intact male or female bovine or bison twelve (12) months of age or older designated to be used for breeding.

(2) "Herd" means all bovine and bison animals that:

(a) Are maintained on common grounds under common ownership or supervision, including an animal which may be geographically segregated; and

(b) Have interchange or movement of animals without regard to health status.

(3) "Herd known to be infected with mycobacterium paratuberculosis" means a herd in which bovine, bison, or other animals on the premises have been determined to be infected with mycobacterium paratuberculosis by an official mycobacterium paratuberculosis epidemiologist or state veterinarian;

(4) "Johne's" means a contagious, infectious and communicable disease caused by mycobacterium paratuberculosis bacteria.

(5) "Management agreement plan (MAP)" means a plan voluntarily agreed to by the herd owner, designated herd veterinarian, and the Department of Agriculture or state veterinarian that is designed to qualify the herd as mycobacterium paratuberculosis free.

(6) "Negative herd" means a herd that tested negative to an official mycobacterium paratuberculosis test that was given to classify animals in the herd for participation in a voluntary management agreement plan.

(7) [(3)] "Official mycobacterium paratuberculosis epidemiologist" means a state or [of] federal veterinarian that is designated by the state veterinarian and the federal veterinarian in charge to investigate,

diagnose [to diagnosis], and make recommendations concerning an animal [animals] affected with mycobacterium paratuberculosis.

(8) [(4)] "Official mycobacterium paratuberculosis test" means a [any] serological test, fecal culture, DNA probe or [any] other test that is;

(a) Approved by the state veterinarian for the diagnosis of mycobacterium paratuberculosis; and

(b) [is] Licensed or approved by the United States Department of Agriculture and the Kentucky Department of Agriculture.

(9) [(5)] "Positive animal" [and "suspect animal"] means an animal:

(a) Which has given a positive or suspect reaction to an official serology test or culture positive for the mycobacterium paratuberculosis organism; or

(b) In which [or when] the mycobacterium paratuberculosis organism has been found in:

1. The body of the [an] animal; or

2. [in] The body discharge of the [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:

(a) A positive animal; or

(b) An animal with an unknown Johne's disease status. [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 require-

ments 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, official mycobacterium paratuberculosis [Johne's] epidemiologist and state veterinarian shall develop a mycobacterium paratuberculosis MAP.

(8) The herd veterinarian shall:

(a) Advise the owner in implementing the herd MAP;

(b) [and shall] Submit to the Office of the State Veterinarian, Division of Animal Health, a copy of the herd MAP; and

(c) [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.

(4)(a) [NOTE:] The register for herds enrolled in a voluntary Johne's program shall [will] be public information.

(b) 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 mycobacterium paratuberculosis [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) To maintain a Johne's test negative herd, the herd shall have:

1. An annual herd test of all animals twenty (20) months of age or older; and

2. A fecal culture conducted every third year. [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) If [When] a Johne's positive animal is classified, the herd shall be tested following the requirements established 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 mycobacterium paratuberculosis [Johne's] test.

(b) All animals twenty (20) months of age or older that are positive to an official serology test shall:

1. Have a fecal culture for Johne's; or

2. [shall] Immediately be removed from the herd and sent to

slaughter.

(c) A Johne's positive animal [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 official mycobacterium paratuberculosis [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 official mycobacterium paratuberculosis [Johne's] epidemiologist and the state veterinarian shall determine test requirements.

(4) Herd addition test requirements.

(a) An animal [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 [animal(s)] introduction to the premises. An animal [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 animal [animals] shall be tested for Johne's by serology.

(d) Twelve (12) months post introduction into the herd, the animal [animals] shall be tested for Johne's by serology and fecal culture.

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 shall 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. A calf shall not nurse the dam.

(d) The udder shall be cleaned and disinfected prior to collecting colostrum for the initial feeding.

1. Except as provided in subparagraph 2 of this paragraph, colostrum shall:

a. Be pasteurized; or

b. Originate from a cow that has had two (2) negative tests at not less than six (6) month intervals.

2. For an older calf, pasteurized milk or commercial milk replacement shall be used.

(e) Caution shall be taken to prevent feed contamination. Clean feeding equipment shall be used.

(f) An individual hutch or pen shall be used to house a calf. A calf housing facility shall be separate from the adult cattle. A calf shall not have exposure to adult cattle fecal material.

(g) Clean bedding shall be used. Caution shall be taken to prevent the introduction of manure into the calf housing facility by footwear, equipment, or other means. All clothing shall be changed and equipment cleaned and disinfected prior to entering the calf housing area.

(h) A calf shall be housed and pastured in a designated Johne's disease free area. A winter housing area shall be

separate and apart from the adult herd.

(i) Clean John's free water shall be provided.

1. The water source shall originate from developed tanks or free-flowing streams.

2. A stagnant pool shall be fenced to prevent livestock entry.

(j) If it is not practical to separate the calves, the cows shall calve in a large, clean, open pasture area. Cows shall not be brought together or restricted to a small designated area if calving.

(k) The requirements established in this subsection shall have been implemented and approved by the official mycobacterium paratuberculosis epidemiologist and by the state veterinarian. The herd shall participate in Phase I for twelve (12) months. [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 John's disease free areas. All winter housing areas shall be separate and apart from the adult herd.

(i) Clean John'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 John'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) A classified John's positive animal [animals] shall be isolated and sold for slaughter [only].

(c) [All] Offspring from an animal [animals] with clinical mycobacterium paratuberculosis symptoms shall be removed from the herd;

1. Immediately; or

2. [shall be removed from the herd] Prior to eighteen (18) months of age.

(d) An animal [Animals] with symptoms of mycobacterium paratuberculosis shall be immediately isolated and tested. The requirements established in [of] Section 3(2)(a), (b) and (c) of this administrative regulation shall be completed.

(3) Phase III.

(a) A Phase III herd shall be [is] a herd which has;

1. Been a qualified Phase II herd for twenty-four (24) months or

more; and

2. [has] Had four (4) consecutive negative herd tests of all eligible animals at not less than six (6) month intervals.

(b) To maintain a John'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 John's test negative anniversary date.

Section 5. Loss of Herd John's Test Negative Status. (1) Detection of mycobacterium paratuberculosis by a [any] laboratory procedure shall constitute a suspension of the mycobacterium paratuberculosis negative herd status. The herd shall be removed from the John's test negative herd registry.

(2) If [When] there is a loss of John's test negative herd status, reestablishment shall be granted after [when] two (2) negative herd tests of all eligible animals have been conducted at six (6) months and twelve (12) months following the loss of John's negative herd status.

(3) If [When] a purchased addition causes a loss of John's negative herd test status, the state veterinarian, the official mycobacterium paratuberculosis epidemiologist, the herd veterinarian and the owner shall amend the MAP for reinstatement of mycobacterium paratuberculosis John's test negative herd status.

Section 6. Proper Test and Culture Payment. If [When] available, the Kentucky Department of Agriculture shall [will] provide funds for laboratory mycobacterium paratuberculosis (John's) test culture for a [when the] herd [is] enrolled in a MAP. Enrollment in a MAP shall be a requirement [is required] for payment of the initial test.

Section 7. Incorporation by Reference. (1) "Kentucky Department of Agriculture John's Herd Management Agreement Plan (MAP)" is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Agriculture, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: January 8, 1998

FILED WITH LRC: January 15, 1998 at 10 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(As Amended at ARRS, April 15, 1998)

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit.

RELATES TO: KRS 138.462, 138.463, 138.4631, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463(9)

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463(9) requires the fair market rental or lease value of a motor vehicle to be based on standards established by administrative regulation promulgated by the Transportation Cabinet. This administrative regulation establishes the standards for use in determining [The standards set forth in this administrative regulation are to be used in establishing] the minimum amount of usage tax to be reported and paid on a rental or lease vehicle.

Section 1. Definitions. (1) "Lease" is [means as] defined in KRS 138.462(3).

(2) "Regularly engaged in the business of renting or leasing to retail customers" means a U-drive-it permit holder who:

(a) Rents or leases vehicles as part of an established business to retail customers who wish ~~[anyone who wishes]~~ to rent or lease a vehicle;

(b) Executes, at a minimum, ninety (90) percent of its rental and lease transactions at fair market value ~~[established by arm's-length transactions]~~; and

(c) Maintains the records required pursuant to 601 KAR 1:147.

(3) "Rental" ~~is [means as]~~ defined in KRS 138.462(2).

(4) "Vehicle type classification" means the motor vehicle classification system established by the National Automobile Dealers Association and set forth in their "Official Used Car Guide".

Section 2. Fair Market Value (FMV) Rental Amount of a Permit Holder. (1) If a U-drive-it permit holder is regularly engaged in the business of renting vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average rental amount per day and per agreement to establish the FMV rental amount per day and per agreement for this permit holder.

(2) The FMV rental amount shall be used to assess the usage tax imposed pursuant to KRS 138.463 on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of renting or leasing vehicles to retail customers ~~if [under the following conditions]~~:

(a) The transaction is for less than the fair market value of the rental of the motor vehicle ~~[less than arms-length]~~; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 3. Fair Market Value (FMV) Transportation Cabinet Established Rental Amount. (1) The Transportation Cabinet Division of Audit Review shall establish based on the monthly remittance of usage tax pursuant to KRS 138.463 to the Transportation Cabinet which of the U-drive-it permit holders are the ten (10) ~~[six (6)]~~ largest volume permit holders who are regularly engaged in the business of renting motor vehicles to retail customers.

(2)(a) The Transportation Cabinet Division of Audit Review shall survey the ten (10) ~~[six (6)]~~ permit holders to determine the average FMV rental amount for each specific vehicle type classification.

(b) The value for each specific vehicle classification established by paragraph (a) of this subsection shall be the FMV Transportation Cabinet established rental amount for the specific vehicle classification.

(3) The FMV Transportation Cabinet established rental amount for a specific vehicle type classification shall be used to assess the tax imposed under KRS 138.463 for the following:

(a) Every transaction of a permit holder who is not regularly engaged in the business of renting vehicles to retail customers; or

(b) A vehicle being used for which the permit holder regularly engaged in the business of renting or leasing vehicles to retail customers is not reporting the ~~[any]~~ U-drive-it usage tax on his monthly tax return;

(4) The current FMV Transportation Cabinet established rental amount for each specific vehicle classification is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 4. ~~[3:]~~ Fair Market Value (FMV) Lease Amount. (1) If a U-drive-it permit holder is regularly engaged in the business of leasing vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of the permit holder's lease vehicles.

(2) The FMV lease amount shall be used to assess the KRS

138.463 U-drive-it usage tax on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of leasing vehicles to retail customers under the following conditions:

(a) The transaction is for less than the fair market value of the lease of the motor vehicle ~~[less than arms-length]~~; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 5. ~~[4:]~~ Fair Market Value (FMV) Transportation Cabinet Established Lease Amount. (1)(a) The Transportation Cabinet Division of Audit Review shall survey the executed lease agreements of eight (8) ~~[five (5)]~~ randomly selected U-drive-it permit holders who are regularly engaged in the business of leasing vehicles to retail customers to determine the average dollar lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of a vehicle.

(b) The value established as the average dollar lease per \$1000 of the MSRP by paragraph (a) of this subsection shall be the FMV Transportation Cabinet lease amount per \$1000 of the MSRP.

(2) The usage tax assessed under KRS 138.463 for a lease vehicle of a permit holder who is not regularly engaged in the business of leasing vehicles to retail customers shall be the greater of the following:

(a) The FMV lease amount per \$1000 value of the MSRP of the vehicle established in subsection (1) of this section; or

(b) The monthly lease amount assessed by the permit holder.

(3) The average dollar lease amount per \$1000 value of the MSRP is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 6. ~~[5:]~~ Material Incorporated by Reference. (1) The following material is incorporated by reference ~~[in this administrative regulation]~~:

(a) The August 1997 edition of the Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"; and

(b) The March 1998 edition of "Vehicle Type Classification" as extracted from the ~~[October 1997 edition of the]~~ National Automobile Dealers Association "Official Used Car Guide" by the Transportation Cabinet.

(2) This ~~[The]~~ material ~~[incorporated by reference in this administrative regulation]~~ may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review, 641 Teton Trail, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502)564-6760.

ED LOGSDON, Commissioner

GLENN B. MITCHELL, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 1, 1997

FILED WITH LRC: December 4, 1997 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(As Amended at ARRS, April 15, 1998)

601 KAR 1:147. Auditing of U-drive-it permit holders.

RELATES TO: KRS 131.340, 138.462, 138.463, 138.4631, 186.005, 186.281, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463, 138.4631
NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.463 and 138.4631 require the Transportation Cabinet to assess, collect, and audit the monthly U-drive-it usage tax. This administrative regulation establishes [sets forth] the recordkeeping requirements for a permit holder [to which the permit holders will be held] and the audit procedures of the Transportation Cabinet.

Section 1. Definitions. (1) "Lease" is defined in KRS 138.463(3).
(2) "Rental" is [means as] defined in KRS 138.462(2).
~~[(2) "Lease" means as defined in KRS 138.462(3);]~~

Section 2. Recordkeeping. (1) Rental records.

(a) A holder of a U-drive-it permit who rents vehicles shall:

1. Develop a consecutive, preprinted numbering system for its rental agreements; ~~[and]~~

2. For each motor vehicle included in the permit holder's rental fleet, retain a copy of the original invoice from the manufacturer or some other document which shows the manufacturer's suggested retail price of the motor vehicle plus the cost of all options included on the motor vehicle; and

3. Retain a copy of each rental agreement in consecutive order, including a voided or damaged agreement.

(b) The following information shall be included on a rental agreement:

1. Rental agreement number;
2. Beginning date of the rental;
3. Ending date of the rental;

4. Identification of the specific rental vehicle which includes the following:

- a. Vehicle identification number;
- b. Make;
- c. Model; and
- d. Year;

5. Odometer reading of the rental vehicle at the beginning of the rental agreement;

6. Odometer reading of the rental vehicle at the end of the rental agreement;

7. Amount charged for the rental agreement;

8. Method of calculation of the rental amount charged which includes mileage charges and number of days used; and

9. Identification of the person renting the vehicle.

(c) The record of a rental transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

~~(2) [(3)]~~ Lease records. A holder of a U-drive-it permit who leases vehicles shall retain a copy of the leasing agreement and other information as required by this subsection.

(a) A lease agreement shall include the following information:

1. Complete name and address of the lessee;
2. Beginning date of the lease;
3. Ending date or term of the lease;
4. Identification of the lease vehicle which includes the following:
 - a. Vehicle identification number;
 - b. Make;
 - c. Model;
 - d. Year; and
 - e. Manufacturer's suggested retail price;
5. Final lease termination calculation and date;
6. Monthly payment amount subject to the tax imposed by KRS 138.463;

7. Down payment or trade-in information; and
8. Dated signature of the lessee and the lessor.

(b) The following, if [where] applicable, shall be attached to the lease agreement:

1. Certificate of title of the leased vehicle;
2. A lease amount calculation worksheet;

3. A lease extension agreement;
4. Documentation of a lease early termination; and
5. Other information which would alter the original lease agreement.

(c) The record of a lease transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

Section 3. Audits of Permit Holders. (1) The Division of Audit Review shall notify the permit holder of the date, time, and location of the audit. At least fifteen (15) days' advance notice shall be given to the permit holder.

(2) Pursuant to the requirements established [guidelines set forth] in KRS 138.463(6), the audit period shall not exceed [be] either four (4) years or six (6) years.

(3) Except as provided by subsection (4) of this section, failure of the permit holder to make available a requested record [the requested records] required to be kept by the permit holder pursuant to Section 2 of this administrative regulation for which the permit holder is not able to provide sufficient alternate records to the auditor shall [may] result in an assessment of tax based on KRS 138.460, 601 KAR 1:146, or cancellation of the permit, whichever is appropriate as determined by the audit.

(4)(a) A missing or incomplete record shall result in an assessment based on KRS 138.460 or 138.463, whichever is appropriate as determined by the audit. [Missing or incomplete records shall result in an assessment based on 601 KAR 1:146 or KRS 138.460 whichever is appropriate as determined by the audit.]

(b) In computing the assessment for a specific transaction, the permit holder shall be given credit for a [any] tax previously remitted to the Transportation Cabinet for that transaction.

(5) If an audit is being conducted [on-site], the auditor shall conduct and document a preaudit conference with the permit holder outlining the operation, audit procedures, records to be examined, sample period (if any), and sampling procedures. The permit holder and auditor shall determine at the preaudit conference who shall be: (a) Responsible [has the responsibility] for the final acceptance of audit findings; and

(b) [who should be] involved in the close-out conference.

(6) If the audit is being conducted [on-site], the auditor shall conduct and document a close-out conference with the permit holder outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report shall [should] be addressed.

(7) The Transportation Cabinet shall furnish the permit holder a letter of audit findings and recap schedules. If requested, the cabinet shall supply detailed work papers which are backup material to the recap schedules [any other work papers] to the permit holder.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a Notice of Tax Due statement.

(9) The permit holder shall within forty-five (45) days of the date of the notice of tax due statement pay the tax due or protest in writing pursuant to Section 4 of this administrative regulation.

Section 4. Protest or Appeal of Audit Results. (1) The permit holder may within forty-five (45) days of the date of the letter of transmittal of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review a [any] portion of the audit.

(2) If the permit holder does not protest, the audit and the notice of tax due statement shall be final on the beginning of the 46th day.

(3)(a) If a permit holder protests pursuant to this section, the protest shall include a supporting statement and documents which identify:

1. The specific adjustments requested;
2. The portions of the audit being protested; and
3. The reasons the protest is being made.

(b) If the supporting statement and documents are not sufficient

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to cause the Transportation Cabinet to change the audit or notice of tax due statement as requested by the permit holder in its protest, the permit holder shall be notified to attend an information gathering and [/] protest conference with the Division of Audit Review. The information gathering and [/] protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled [only] one (1) time by either party.

(4) The permit holder shall [may] within thirty (30) days of the date of the final audit or final notice of tax due statement;

(a) Pay the tax due; or

(b) Appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

ED LOGSDON, Commissioner

GLENN B. MITCHELL, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 1, 1997

FILED WITH LRC: December 4, 1997 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, April 15, 1998)

704 KAR 20:015. Rank I classification.

RELATES TO: KRS 157.390, 161.010, 161.095

STATUTORY AUTHORITY: KRS 156.070, 157.390, 161.028, 161.030, 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.390(1) and (2) requires [authorizes] the State Board of Education to promulgate [adopt] an administrative regulation [regulations] to determine the salary rank [ranks] of a certified teacher [teachers] and to determine the equivalent qualification [qualifications] for the salary rank [ranks]. 704 KAR 3:470, promulgated by the State Board of Education, gives authority to the Education Professional Standards Board to establish the standards and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 requires [authorizes] the Education Professional Standards Board to establish procedures for a teacher to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation defines approved graduate work for the Rank I classification and defines [an] equivalent programs for Rank I.

Section 1. [Effective until June 30, 1989, the preparation program for a Rank I classification shall be planned as outlined in 704 KAR 20:010 and shall require the completion of either:

(1) Plan I. Thirty (30) semester hours approved graduate level credit or approved equivalent in addition to the requirements for a Rank II classification; or

(2) Plan II. Sixty (60) semester hours approved graduate level credit or approved equivalent including a master's degree.

Section 2. [Effective July 1, 1989,] The preparation program for a Rank I classification [under the Foundation Law] shall require the completion of the following:

(1) [Documentation that the preparation program was planned in advance as required in 704 KAR 20:010;

(2) Completion of the requirements for a Rank II classification as established [identified] in 704 KAR 20:021; and

(2) [20:020;

(3) The completion of one (1) of the plans [as] described in this subsection:

(a) Plan I. Thirty (30) semester hours of approved graduate level credit or approved equivalent [in addition to the requirements for a

Rank II classification]; or]

(b) Plan II. Sixty (60) semester hours of approved graduate level credit or approved equivalent including a master's degree [and the requirements for a Rank II classification].

(c) Plan III. National Board Certification [in addition to the requirements for a Rank II classification]; or

(d) Plan IV. Equivalent continuing education with evidence of continuous progress as required by [identified in] Section 5 of this administrative regulation [in addition to the requirements for a Rank II classification].

Section 2. [3:] The Plan I and II equivalent preparation shall be approved by the Education Professional Standards Board [Superintendent of Public Instruction] on the basis of the following criteria:

(1) Approved equivalent credit shall be offered in the form of a teacher institute [institutes] designed for the purpose of upgrading classroom teaching personnel in a [their] teaching specialty [specialties];

(2) A [The] teacher institute [institutes] shall be offered [only] by an institution that is [the institutions that are] approved by the Education Professional Standards Board [State Board of Education] for offering a Rank I program. A [programs:] teacher education institution [institutions] shall make application to the Education Professional Standards Board for the advanced approval of a teacher institute [institutes] [on forms provided by the Superintendent of Public Instruction];

(3) Operation of a teacher institute [the teacher-institutes] shall meet the standards for accreditation of a teacher preparation program [programs];

(4) Equivalency credit toward a Rank I classification shall [may] be earned [only] by professional personnel who have already attained a Rank II classification;

(5) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution; and

(6) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through an approved teacher institute [institutes] may be applied for teacher certification purposes as described in 704 KAR 20:030.

Section 3. [4:] The appropriate official designated by the teacher education institution shall certify to the Education Professional Standards Board [State Department of Education] when the curriculum requirements have been completed for the Rank I program at the institution.

Section 4. [5:] Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit shall be taken at:

(1) The same institution; or

(2) Upon approval of the college adviser, another institution [may be taken at the same institution or, upon approval of the college adviser, at another institution] [other institutions].

Section 5. The Plan IV equivalent continuing education program shall be approved by the Division of Certification on the basis of the following criteria:

(1) An individualized professional development plan shall be designed by the teacher. The plan shall focus on the teacher's needs with consideration given to how the needs relate to the school transformation plan;

(2) The plan shall include goals related to continuing growth on each of the nine (9) experienced teacher standards established

[identified] in 704 KAR 20:021 and may be developed in collaboration with a team of colleagues whom the teacher chooses;

(3) The plan shall be submitted for review to a three (3) member state review team;

(4) The teacher shall participate in a professional development experience [experiences] that will assist in the accomplishment of the goals established. A [The] professional development experience [experiences] shall include a [any] combination of graduate college credit, individual research, field-experience, and professional development activities or workshops. A [The] professional development experience [experiences] chosen shall be listed within the professional development plan;

(5) A [The] professional development experience [experiences] may be:

(a) A part of the approved school professional development plan; or

(b) An experience [may be experiences] specifically needed by the individual teacher;

(6) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that the teacher has demonstrated continuing growth on each of the experienced teacher standards; and

(7) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including[, but not limited to:] videotape, research, data, or [and] instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 6. (1) The state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that the professional development plan was accomplished and that growth on each of the experienced teacher standards was evident;

(d) Recommend the teacher for Rank I classification and certificate renewal to the Education Professional Standards Board; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 7. An assessment fee of [not to exceed] \$1200 shall be assessed to a teacher who chooses to follow the Plan IV option for advancement in rank classification and certificate renewal. The fee shall be used to pay the expenses related to the administration of the continuing education option, including the cost of the review and scoring of portfolios.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: February 10, 1998

FILED WITH LRC: February 11, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, April 15, 1998)

704 KAR 20:021. Planned Fifth-year Program.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the standards for the Fifth-year Program for certificate renewal.

Section 1. (1) The standards required for the renewal of a teaching certificate [certificates] shall require completion of:

(a) The continuing education alternative plan as defined in 704 KAR 20:022; or

(b) Plan I or Plan II described in this administrative regulation and in keeping with one (1) or more of the following purposes:

1. [(a)] To improve the professional competency for the position covered by the initial teaching certificate;

2. [(b)] To extend the scope of professional competency to a [some] certification area not covered by the initial certificate; or [and]

3. [(c)] To obtain preparation-certification required for professional advancement to a higher position.

(2) Upon application by the candidate, the teacher education institution shall verify the completion of the Fifth-year Program to the Division of Certification.

Section 2. (1) Plan I Fifth-year Program shall require the completion of a master's degree from a college or university which meets the standards established by the Education Professional Standards Board in 704 KAR Chapter 20:

(a) In a professional education specialty for which certification is issued;

(b) In an academic subject for which teacher certification is issued; or

(c) In professional education with emphasis in an academic subject for which certification is issued.

(2) The master's degree shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in Section 4 of this administrative regulation or with standards established [adopted] by the Education Professional Standards Board in 704 KAR Chapter 20 for a particular professional education specialty.

Section 3. Plan II Fifth-year Program shall require thirty-two (32) semester hours of graduate level coursework earned beyond the bachelor's degree and the four (4) year program of teacher preparation in accordance with the following guidelines:

(1) The Fifth-year Program shall be planned individually with each candidate by a teacher education institution approved for offering graduate programs of teacher preparation.

(2) The Fifth-year Program shall be a major component of the candidate's professional growth plan and shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in Section 4 of this administrative regulation or with standards established [adopted] by the Education Professional Standards Board in 704 KAR Chapter 20 for a professional education specialty.

(3) The Fifth-year Program shall relate to the initial classroom teaching certificate or to an additional classroom teaching certificate.

(4) The grade point standing for the thirty-two (32) semester hour program shall not be [no] less than is required at the planning institution for a teacher education graduate [graduates].

(5) Professional development in lieu of up to twelve (12) semester

hours of ~~the~~ college credit shall be approved as part of Plan II Fifth-year Program if requested by the applicant using the following guidelines:

- (a) Twenty-four (24) clock hours of professional development shall equal one (1) semester hour;
- (b) The candidate shall seek and obtain prior approval of the institution for the professional development activities;
- (c) The application for approval shall identify the specific professional development activities, and the action plan to achieve one (1) or more goals of the professional growth plan identified in subsection (2) of this section;
- (d) Upon completion of the professional development activities, the candidate shall submit to the institution a report of the activities which shall include an evaluation of the experiences and a follow-up plan for implementing the professional development; **and**
- (e) The institution shall keep a record of the professional development completed by each candidate for the Fifth-year Program.

Section 4. New Teacher Standards. An approved preparation program [programs] for initial certification to be completed at the master's degree level shall be consistent with the new teacher standards as established [defined] in 704 KAR 20:670.

Section 5. Experienced Teacher Standards. **A** [All] fifth-year program **plan** [plans] other than **a plan** [these] in a professional education specialty for which the Education Professional Standards Board has **established** [adopted] specific standards **in 704 KAR Chapter 20** shall be consistent with the following experienced teacher standards:

- (1) Experienced Teacher Standard I. Demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being.
- (2) Experienced Teacher Standard II. Demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas.
- (3) Experienced Teacher Standard III. Designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.
- (4) Experienced Teacher Standard IV. Creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.
- (5) Experienced Teacher Standard V. Implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.
- (6) Experienced Teacher Standard VI. Assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.
- (7) Experienced Teacher Standard VII. Reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning.
- (8) Experienced Teacher Standard VIII. Collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient

individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Experienced Teacher Standard IX. Engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan.

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: November 18, 1997

FILED WITH LRC: January 20, 1998 at 11 a.m.

EDUCATION, ARTS AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, April 15, 1998)

704 KAR 20:022. Continuing education alternative to planned fifth-year program.

RELATES TO: KRS 157.390(1)(a), 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to **promulgate** [establish] an administrative regulation **establishing** [identifying] procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the planned fifth-year program for certificate renewal.

Section 1. Procedures for the first and second renewal of a teaching certificate shall require completion of:

- (1) The continuing education alternative **established** [identified] in this administrative regulation; or
- (2) ~~[completion of]~~ A planned fifth-year program **established** [identified] in 704 KAR 20:021.

Section 2. The continuing education alternative to the planned fifth-year program for certificate renewal of a teaching certificate shall require completion of the following procedures:

- (1) An individual professional development plan shall be designed by the teacher. The plan shall:
 - (a) Focus on the teacher needs with consideration given to how the needs relate to the school transformation plan;
 - (b) Include goals related to each of the nine (9) experienced teacher standards **as established** [identified] in 704 KAR 20:021;
 - (c) **Be** developed in collaboration with a team of colleagues chosen by the teacher; and
 - (d) Be submitted for review by a three (3) member state team.
- (2) The teacher shall participate in **a** professional development **experience** [experiences] that will assist in the accomplishment of the established goals. **A** [The] professional development **experience** **shall include a** [experiences may include any] combination of graduate college credit, individual research, field-experience, **or** [and] professional development activities. The **experience** [experiences] shall be identified in the professional development plan.
- (3) The professional development **experience may be:**
 - (a) ~~[experiences may be]~~ A part of an approved school professional development plan; or
 - (b) **An experience** [may be experiences] specifically needed by the teacher.
- (4) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented

and presented for review and scoring by a state team. The documentation shall provide evidence that all experienced teacher standards have been met.

(5) The evidence shall be presented:

- (a) In a portfolio using a variety of mediums including ~~[-but not limited to:]~~ videotape, research data, and instructional logs; and
- (b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 3. (1) The three (3) member state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Department of Education staff.

(2) The state team shall:

- (a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;
- (b) Use the experienced teacher standards and indicators to review and score the portfolios;
- (c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that goals were accomplished and that all experienced teacher standards were met;
- (d) Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; and
- (e) Be trained to score the portfolios in a consistent and reliable manner.

Section 4. (1) A teacher following the continuing education alternative to the fifth-year program for certificate renewal shall complete the program by the end of the second certificate renewal period.

(2) For the first renewal, the teacher shall show evidence of the development of a professional development plan and evidence of meeting a minimum of four (4) experienced teacher standards.

(3) The continuing education alternative to the fifth-year program shall ~~[may]~~ be completed by the end of the first certificate renewal period.

Section 5. An assessment fee ~~of~~ ~~[not to exceed]~~ \$1200 shall be charged to a teacher following the continuing education alternative for certificate renewal. This fee shall be used to pay expenses related to administration of the continuing education alternative program including the cost of scoring portfolios and training for the state scoring team members.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: February 10, 1998

FILED WITH LRC: February 12, 1998 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, April 15, 1998)

704 KAR 20:045. Recency and certification fees.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards

Board; furthermore, a teacher education institution is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 establishes additional testing and internship requirements for certification. This administrative regulation **establishes requirements** ~~[provides]~~ for the issuance of the limited initial certificate; the beginning teacher internship program; ~~[provides for]~~ certificate renewal ~~[requirements]~~; and ~~[for]~~ filing a certificate application. This administrative regulation **establishes** ~~[addresses]~~ fees to be charged for the issuance, reissuance, and renewal of a certificate.

Section 1. (1) Application for teacher certification shall be made to the Division of Certification.

(2) The application shall be accompanied by an official transcript showing all college credits necessary for the requested certification.

Section 2. Recency. Teacher certification issued initially under the provisions of 704 KAR 20:065, 20:070, 20:080, 20:085, 20:090, 20:145, 20:150, 20:159, 20:222, 20:230, 20:235, 20:240, 20:245, 20:670, 20:270, or ~~[and]~~ 20:290 shall comply with the provisions of KRS 161.030 and the following requirements and procedures:

(1) There shall be a recency of preparation prerequisite for the issuance of a certificate covered by this section, as follows:

(a) Except as provided in paragraphs (b) and (c) of this subsection, an out-of-state applicant for initial Kentucky certification shall have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding the application.

(b) An out-of-state applicant for initial Kentucky certification who has completed a Planned Fifth-year Program shall be ~~[is]~~ exempt from taking the six (6) additional hours, if ~~[provided]~~ the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.

(c) 1. A certificate shall be issued for a one (1) year period ending June 30 of the next calendar year if the applicant:

a. Does not meet the recency of preparation requisite;

b. Has not previously held a Kentucky teaching certificate;

c. Otherwise qualifies for certification; and

d. Agrees that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration.

2. To renew a certificate issued under subparagraph 1 of this paragraph, the applicant shall comply with the requirements for renewal established in subsection (2) of this section. [When an applicant does not meet the recency of preparation prerequisite, and has not previously held a regular Kentucky teaching certificate, but otherwise qualifies for certification, a certificate shall be issued for a one (1) year period ending June 30 of the next calendar year with the condition that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration. Thereafter the further renewal of the certificate shall be in compliance with the usual renewal requirement specified in subsection (2) of this section.]

(2)(a) A teaching certificate ~~[Teaching certificates]~~ described in this section shall be issued for a duration period of five (5) years and with provisions for a subsequent five (5) year renewal, as established ~~[renewals, as provided]~~ in 704 KAR 20:060.

(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate, ~~[-and any]~~ Credit earned in excess of the minimum requirement for a ~~[any]~~ renewal period shall accumulate and be carried forward to apply toward a subsequent renewal.

Section 3. (1) Reissuance.

(a) If a certificate has lapsed as a result of the applicant's failure to meet the renewal requirements, the certificate shall ~~[Whenever there is a lapse in a certificate identified in this section]~~

due to expiration for lack of meeting the renewal requirement, a certificate may] be reissued at a later date for a one (1) year period if the applicant completes [by first completing] at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-year Program.

(b) The [An] applicant shall complete an additional [another] nine (9) semester hours of credit applicable toward the planned fifth-year program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the first [usual] five (5) year renewal period.

(c) At the end of the renewal period established in paragraph (b) of this subsection, [this renewal period] the applicant shall have completed the Planned Fifth-year Program to qualify for the next five (5) year renewal. After the renewal period established in this paragraph, [Thereafter,] the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as required by [defined in] 704 KAR 20:060 or six (6) semester hours of additional graduate credit [or the equivalent in professional staff development units or continuing education units] each five (5) year period shall apply.

(2) An applicant who has already completed the Planned Fifth-year Program and whose certificate lapses shall [may] have the certificate reissued after [first] completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit [or the equivalent in PSDU's or CEU's] for each five (5) year period.

(3) Pursuant to KRS 161.030(3) and (4), [An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements, but who otherwise qualifies for the reissuance of a Kentucky teaching certificate, shall not be required to take the written tests or to participate in the beginning teacher internship program.

(4)(a) An out-of-state applicant having completed two (2) or more years of successful teaching experience within the last ten (10) years, who otherwise qualifies for certification, shall not be required to take the written tests.

(b) [successful experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made and shall be defined as follows:

(a) [1:] Employment shall be at least on a half-time basis;

(b) [2:] A full year of experience shall include at least 140 days of employment performed within the academic year; and

(c) [3:] A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

[5] Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired;

(b) The successful completion of the written tests designated by the Education Professional Standards Board for:

1- General knowledge;

2- Communications skills;

3- Professional education concepts; and

4- Knowledge in the specific teaching field of the applicant, with minimum scores in each test as identified in 704 KAR 20:305 and as established by the Education Professional Standards Board; and

(c) Evidence of employment in a Kentucky school as identified in KRS 156.160.

(6) Upon successful completion of an approved program of preparation and upon completion of the designated tests with acceptable scores, the Education Professional Standards Board shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be issued in accordance with 704 KAR 20:055 and shall be valid for a five (5) year

period. If the teacher internship is not completed within the five (5) year period, the individual shall requalify for another statement of eligibility by retaking and passing the designated written tests with acceptable scores. The individual may requalify for a statement of eligibility by presenting six (6) new semester hours of graduate credit from a Planned Fifth-year Program. This option may only be used on the first requalification for a statement of eligibility.

(7) For a person who attains the statement of eligibility, but who is not appropriately employed, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8)(a) The employment of a teacher intern shall not begin earlier than the effective date shown on the statement of eligibility.

(b) The one (1) year certificate for the beginning teacher internship shall be issued in accordance with 704 KAR 20:055, "Dating of Certificates." If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school district.]

Section 4. Fees. (1) The following fees for teaching certificates shall apply:

(a) Statement of eligibility for internship - no charge;

(b) Limited one (1) year certificate - no charge;

(c) Issuance, reissuance, or renewal of a regular certificate - fifty (50) dollars, which [this] shall include all previously approved certifications and endorsements;

(d) Issuance of a five (5) year substitute certificate - fifteen (15) dollars;

(e) Reissuance of limited four (4) year certification - thirty-five (35) dollars;

(f) A duplicate copy of the certificate - twenty-five (25) dollars.

(2) A refund of the certification fee shall be provided to an unsuccessful certification applicant, less a ten (10) dollar processing fee.

(3) The appropriate fee shall:

(a) Accompany the application; and

(b) Be received in the form of a certified check or money order made payable to the Kentucky State Treasurer. [Appropriate fees shall accompany the application. Fees shall be received in the form of a certified check or money order made payable to the Kentucky State Treasurer.]

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: November 18, 1997

FILED WITH LRC: January 20, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, April 15, 1998)

704 KAR 20:060. Renewals.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board, and KRS 161.020 provides that the validity and terms for the renewal of a

certificate shall be determined by the laws and administrative regulations in effect at the time the certificate was issued [safe-guards the validity of a certificate previously issued from any impairment arising from later changes in certification provisions]. This administrative regulation establishes certificate renewal provisions [for certain unusual circumstances].

Section 1. If [The validity of a certificate for professional school personnel which has been issued under the authority of the Education Professional Standards Board shall not be impaired by the repeal or revision of the certification requirements and the certificate may continue to be renewed in accordance with the provisions in effect at the date of the issuance of the certificate.]

Section 2. When] the renewal of a provisional teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from the Planned Fifth-Year Program.

Section 2. (1) Except as provided in KRS 161.030(3), [3-(4)] a teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals. [The exceptions to this five (5) year certificate shall be the beginning teacher internship and the initial certificate for an applicant who does not meet the recency of preparation prerequisite, both of which shall be issued for one (1) year.]

(2) [The one (1) year beginning teacher internship certificate shall be extended for the remainder of the five (5) year period upon the successful completion of the beginning teacher internship, as judged by a majority vote of the beginning teacher committee.]

(3) A certificate shall be renewed for subsequent five (5) year periods upon the completion of three (3) years of successful teaching experience or at least six (6) semester hours of credit or the equivalent in professional staff development units or continuing education units as defined in 704 KAR 20:020. The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

Section 3. [4:] To provide evidence of continuing growth, a teacher shall complete the following procedures:

(1) An individual professional development plan shall be designated by the teacher around the teacher's [his/her] needs with consideration given to how the needs relate to the school transformation plan;

(2) The plan shall include goals related to a minimum of two (2) of the experienced teacher standards established [listed] in 704 KAR 20:021;

(3) The teacher shall participate in a professional development experience [experiences] that will assist in the accomplishment of the goals established. A [The] professional development experience [experiences] shall include a [any] combination of graduate college credit, individual research, field experience, or [and] professional development activities and workshops. The experiences shall be listed with the professional development plan;

(4) An activity or experience shall be:

(a) A part of the approved school professional development plan; or

(b) An experience specifically needed by the teacher; [The activities and experiences may be a part of the approved school professional development plan or may be experiences specifically needed by the teacher.]

(5) The teacher shall document evidence of the accomplishment of the goals of the plan, including the impact upon student learning, and present the evidence to be reviewed; and

(6) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including[, but not limited to:] videotape, research data, or [and] instruction logs; and

(b) At least one (1) year in advance of the expiration date of the certificate.

Section 4. [5:] The portfolio shall be reviewed by a three (3) member school team chosen by the teacher. At least one (1) of the members of the team shall be a building administrator. This team shall [also] provide assistance in the development of the professional plan. The school team shall:

(1) Use a scoring instrument that includes the experienced teacher standards and indicators as performance criteria when reviewing the portfolio;

(2) Provide timely feedback to the teacher regarding [any] additional evidence that may be needed to show accomplishment of the professional development plan; and

(3) Recommend the teacher for certificate renewal to the Division of Certification prior to the expiration date of the certificate.

Section 5. [6:] Upon expiration, a regular certificate shall [certificates may] be extended for one (1) time [only] for the one (1) year period immediately following the expiration date upon completion of at least one-third (1/3) of the renewal requirements and upon recommendation by the employing school superintendent. The remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement.

Section 6. [7:] [5:] (1) Experience in the armed forces of the United States of America shall [may] be accepted toward the renewal of a teaching certificate in lieu of required teaching experience, if [provided] the applicant held a valid certificate prior to entering military service.

(2) The validity period of a certificate held by a person at the time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

Section 7. [8:] [6:] For a certificate [certificates] requiring teaching experience for renewal, experience as a substitute teacher shall [may] be accepted if the holder of the certificate:

(1) Was employed officially by the local board of education;

(2) Was paid through the board of education; and

(3) Substituted in his [or her] certification area no less than thirty (30) teaching days per semester.

[Section 9. [7:] The executive secretary shall approve the types of experiences which may be accepted under the law and administrative regulations of the Education Professional Standards Board in renewing certificates:]

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: November 18, 1997

FILED WITH LRC: January 20, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(As Amended at ARRS, April 15, 1998)

704 KAR 20:420. Certification for school superintendent.

RELATES TO: KRS 161.020, [161.027:] 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher [teachers] and other professional school personnel hold a certificate [certificates] of legal qualification [qualifications] for the [their] respective position [positions] to be issued upon completion of a program [programs] of preparation prescribed by the

Education Professional Standards Board. KRS 161.028(1)(b) requires that a teacher education institution [Additionally, KRS 161.027 specifically requires a preparation program for superintendents. A teacher education institution shall] [institutions are required to] be approved for offering the preparation program [programs] corresponding to a particular certificate [certificates] on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school superintendent.

Section 1. Conditions and Prerequisites. (1) The professional certificate for instructional leadership - school superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by this administrative regulation; and

(b) The appropriate requirements for certification, as established in 704 KAR Chapter 20. [and requirements including assessments:] [in accordance with the administrative regulations of the Education Professional Standards Board to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20:005, the Kentucky Standards for the Preparation-Certification of Professional School Personnel:]

(2) The professional certificate for instructional leadership - school superintendent shall be valid for the position of school superintendent and assistant superintendent.

(3) [As] Prerequisites for the program of preparation for the professional certificate for instructional leadership - school superintendent, [the candidate] shall include:

(a) Qualifications for a Kentucky teaching certificate;

(b) Admission [Have been admitted] to the preparation program on the basis of criteria developed by the teacher education institution pursuant to 704 KAR 20:696 [20:005];

(c) Completion of a master's degree;

(d) 1. Except as provided in subparagraph 2 of this paragraph, completion of the Levels I and II [both Level I and Level II] preparation and certification for the position of school principal, or supervisor of instruction; or [and]

2. For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration; and

(e) Completion of [(b) Have completed] at least five (5) years of experience as follows:

1. Three (3) years of full-time teaching experience, including at least 140 days per year, and

2. At least two (2) years of additional experience[; including at least 140 days per year,] in a position[(s)] of school principal, [elementary school principal, middle grade school principal, secondary school principal,] supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board[;]

(c) Have completed the master's degree;

(d) Qualify for a Kentucky teaching certificate; and

(e) Have completed both Level I and Level II preparation and certification for any one of the positions of elementary school principal, middle grade principal, secondary school principal, or supervisor of instruction[.]

Section 2. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the certification of school superintendent shall prepare a candidate for the position of superintendent as specified in the following Administrator Standards

[adopted by the Education Professional Standards Board];

(1) Administrator Standard I. The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment;

(2) Administrator Standard II. The administrator practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, and school involvement to improve the learning environment for all students; and

(3) Administrator Standard III. The administrator is the organizational leader and manager who acts with legal and ethical guidelines to accomplish educational purposes.

Section 3. Issuance and Renewal. (1) [(4)] The initial professional certificate for instructional leadership - school superintendent shall be issued for [a duration period of] five (5) years to a candidate who has completed an approved program of preparation for superintendent at the post-master's [Rank-I] level. [and shall be renewed subsequently for five (5) year periods:]

(2) Each five (5) year renewal shall require:

(a) The completion of two (2) years of experience as a school superintendent or assistant superintendent;

(b) [or] Three (3) semester hours of additional graduate credit related to the position of school superintendent; or

(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) [(5)] If a lapse in certification occurs for lack of the renewal requirements, the certificate shall [may] be reissued for a five (5) year period after the completion of an additional six (6) semester hours of graduate study appropriate to the program.

Section 4. Implementation Dates. (1) The provisions for the issuance of the certification for school superintendent shall apply to a candidate admitted to a program of preparation for school superintendent beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school superintendent shall complete the program by September 1, 2000.

(3) A candidate who fails to complete an approved preparation program for school superintendent identified in Section 3 by September 1, 2000, and who does not apply for certification by May 1, 2001, shall be required to qualify for the new certificate identified in this administrative regulation.

(4) Colleges and universities shall take adequate steps to inform a candidate in these programs regarding the implementation dates established [identified] in this section.

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: November 17, 1997

FILED WITH LRC: January 20, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, April 15, 1998)

704 KAR 20:475. Probationary certificate for teachers of technology education.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher [teachers] and other professional school personnel hold a certificate [certificates] of legal qualification [qualifications] for their respective position [positions] to be issued upon completion of a program [programs] of preparation prescribed

by the Education Professional Standards Board. Pursuant to KRS 161.028, a [the] teacher education institution is [institutions are] required to be approved for offering the preparation program [programs] corresponding to particular certificate [certificates] on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into a position [positions] for teachers of technology education. This administrative regulation is not required by federal law.

Section 1. Definition "Qualified [technology education] teacher" means a teacher who holds certification as a technology education teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of [in] Technology Education. (1) If a qualified teacher is not available for the position of technology education teacher as attested by the local superintendent, the superintendent may request that a one (1) year probationary certificate be issued for a specific technology education offering as approved by the Division of Secondary Vocational Education to a teacher who shall meet [meets] the following requirements:

(a) Holds one (1) of the following:

1. [(1) Holds] A valid classroom teaching certificate for teaching in the middle school or secondary school; or

2. A bachelor's degree in a related area of concentration or major approved by a Division of Secondary Vocational Education technology consultant, and a designated university teacher trainer;

(b) Has a grade point average of 2.5 on a 4.0 scale;

(c) Meets the minimum standards for admission to a teacher education preparation program at an approved institution of higher education;

(d) Completes six (6) clock hours of training in a technology education new teacher institute;

(e) Develops a continuous plan for curriculum completion with an approved institution for technology education;

(f) Successfully completes all required assessments identified in 704 KAR 20:305; and

(g) Documents 1000 clock hours or six (6) months of full-time employment of work related experience or other exceptional life experience related to teaching technology education.

(2) Upon completion of all requirements in Section 1 of this administrative regulation, the candidate shall be issued a probationary certificate for teachers of technology education, valid for one (1) year. The Division of Secondary Vocational Education, in cooperation with a technology education teacher trainer, shall grant approval for each course [the specific courses] to be taught by a probationary teacher.

[(2) Has enrolled in a preparation program which shall lead to full certification in technology education. This program shall be developed with a technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education and shall include a personal professional development plan:

[(3) Has completed twelve (12) clock hours of training, as required and verified by the Division of Secondary Vocational Education, on student safety in activities associated with the specific technology education offering for which application is being made:]

Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of [in] Technology Education. (1) The first renewal of the probationary certificate for teachers of technology education shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;

(b) Completion of twelve (12) [The applicant shall complete six (6)] clock hours of orientation and management training provided through the technology education new teacher institute, within [by the

Division of Secondary Vocational Education no later than] the first six (6) weeks of employment;

(c) Completion of twelve (12) [(2) The applicant shall complete six (6)] semester hours from the continuous curriculum [professional development] plan; six (6) hours to be completed within the first semester of the technology education teaching assignment; and

(d) Successful completion of the internship program identified in 704 KAR 20:690.

[(3) The first one (1) year renewal of the probationary certificate shall require twelve (12) semester hours from the professional development plan to be completed by September 1 of the year of expiration:

(4) Each subsequent one (1) year renewal shall require an additional six (6) semester hours from the professional development plan to be completed by September 1 of the year of expiration:]

(2) The continued one (1) year renewal of the probationary certificate shall require twelve (12) hours of additional credit from the preapproved continuous curriculum plan. Upon successful completion of all requirements, a professional certificate for industrial technology shall be issued valid for five (5) years.

Section 4. Requirements for Extending the Probationary Certificate. The probationary certificate may be extended to include additional technology education offerings upon recommendation by the Division of Secondary Vocational Education and the technology education teacher trainer.

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: November 17, 1997

FILED WITH LRC: January 20, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, April 15, 1998)

704 KAR 20:700. Standards for admission to teacher education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to a teacher education program and is not required by federal law or regulation.

Section 1. Selection and Admission to Teacher Education Programs. In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated under 704 KAR 20:696 [20:695], each teacher education institution shall develop a plan of selection and admission of teacher candidates for the teacher education program, which shall include:

(1) Tests to measure general academic proficiency;

(2) Review of the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680; and

(3) A declaration signed by each teacher candidate affirming a commitment to upholding the code and acknowledging awareness of information required for state certification.

Section 2. Tests to Measure General Academic Proficiency. (1) The teacher education institution shall determine whether each

applicant exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A student who plans to apply for admission to a teacher preparation program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as a teacher without first providing evidence of meeting the general academic proficiency requirement.

(3) The teacher education institution shall implement one (1) or more of the following plans:

(a) Plan I. A minimum composite score of 21 on the Enhanced American College Test (ACTE), or 19 on the American College Test (ACT);

(b) Plan II. The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;

(c) Plan III. ~~[A score established by the Education Professional Standards Board for the]~~ Preprofessional Skills Test (PPST) results, a minimum of:

1. Reading 173;

2. Mathematics 173; and

3. Writing 172;

(d) Plan IV. Graduate Records Exam (GRE) results, a minimum of 400 in each component (verbal, quantitative, analytical); or

(e) Plan V. An institution of higher education may use an alternate test if [provided] the following guidelines are met by the institution requesting the alternative:

1. Provide evidence that the alternative test score covers the areas of written communication, reading, and computational skills;

2. Demonstrate that the passing score for a student on the alternative test is equivalent to passing score on the ACTE, [SAT,] PPST, Praxis, or GRE;

3. Provide a regular review (at least every third year) to show that alternative test passing scores remain equivalent to state required test passing scores; and

4. Describe procedures for the admission of a student who transfers from another teacher education program in the state.

Section 3. Annual Report. Each teacher education institution shall report annually to the Education Professional Standards Board the scores of the admission tests for each applicant, including scores for an applicant denied admission.

ROSA WEAVER, Chair

ROBERT SHERMAN, General Counsel

APPROVED BY AGENCY: January 8, 1998

FILED WITH LRC: January 27, 1998 at noon

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, April 15, 1998)

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(1)(a),
216B.105, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) and 216B.105 require [mandate] that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation establishes [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 required by KRS 216B.105(1) shall be conspicuously posted in a public area of the facility.

(2) An applicant [(3) All applications] for licensure shall file [be filed] with the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, appropriate application for licensure, as follows:

(a) Application for License to Operate a Family Care Home;

(b) Application for License to Operate a Long-term Care Facility and Rehabilitation Service;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency;

(e) Application for License to Operate a Special Health Clinic, Specialized Medical Technology Service, Mobile Health Service; or

(f) Application for License to Operate a Health Facility or Service.

(3) An applicant for a license [(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 an on-site inspection [inspections] of the health facility. Except for a health facility [facilities] subject to KRS 216.530, a licensure inspection [inspections] may be unannounced.

(b) A representative [Representatives] of the inspecting agency shall have access to the health facility during the hours that the facility operates.

(c) A [Any] regulatory violation identified during an inspection shall [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 violation [violations] to the inspecting agency within ten (10) days.

1. The [Such] plan shall specify the date~~[(s)]~~ by which each violation shall [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. If [In instances where] a portion or all of the plan is unacceptable:

a. The inspecting agency shall specify the reasons for the unacceptability; and

b. ~~[4. In such cases,]~~ The health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(4) A licensee [(5) All licensees] shall, as a condition of licensure or relicensure, be in compliance with the following reporting requirements unless otherwise exempted.

(a) A licensee [All licensees] shall have submitted the 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.

(b) A completed semiannual report [reports] required by the cabinet shall be submitted within thirty (30) days of the date the request is mailed.

(c) A licensee [Licensees] shall be notified of the reporting requirements established in KRS 211.190(7) and 902 KAR 17:040

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no later than October 1 of the year preceding the report year.

(5) An unannounced inspection ~~[(6) Unannounced inspections]~~ shall be conducted:

(a) On a [on] complaint allegation; and

(b) [allegations. Such inspections shall be conducted] Utilizing the procedures **established in** ~~[outlined under]~~ subsection **(3) [(4)]** of this section.

(6) A license ~~[(7) All licenses]~~ shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(7) A licensee shall ~~[(8) Licenses may]~~ be renewed upon payment of the prescribed fee and compliance with the applicable provisions of the licensure administrative regulations.

(8) [(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]**.

(9) More than [(10) Only] one (1) license shall not be issued or renewed for a particular licensure category at a specific location and, if specified, a designated geographical area.

(10) [(11)] A new application shall be filed in the event of change of ownership.

(a) A change of ownership for **a license** ~~[licenses]~~ shall be deemed to occur **if [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. **An [No] additional fee shall not [will]** be charged for the remainder of the licensure period.

(11) [(12)] [(11)] There shall be full disclosure to the cabinet of the name and address, **or a change in the name or 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 **or [and]** director of the corporation, **if [where]** a facility is organized as a corporation; and

(c) Each partner, **if [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)	\$.04 per sq. ft. \$2300 maximum
(b) All other health facilities plans and specifications review (initial through final)	\$.04 per sq. ft. \$1200 maximum

(2) Annual fees. The annual licensure fee (including **a renewal [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 \$25 per satellite
(w) Psychiatric hospitals	
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

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for License to Operate a Family Care Home.

L&R 4 (11/97);

(b) Application for License to Operate a Long-term Care Facility and Rehabilitation Service, L&R 5 (3/98);

(c) Application for License to Operate a Hospital, L&R 140 (11/96);

(d) Application for License to Operate a Home Health Agency, L&R 141 (2/94);

(e) Application for License to Operate a Special Health Clinic, Specialized Medical Technology Service, Mobile Health Service, L&R 142 (6/96); and

(f) Application for License to Operate a Health Facility or Service, L&R 144 (11/92).

(2) This material may be inspected, copied or obtained at the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

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.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, April 15, 1998)

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(+), (2)]

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 require [mandate] that the Kentucky Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes [provides] licensure requirements for the operation, services, and facility specifications of a community mental health-mental retardation center [centers]. 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) "Center" means a [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 educational 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 shall provide [provides] a comprehensive range of accessible and coordinated mental health-mental retardation services, including direct services or [and] indirect mental health or [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) To obtain or [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 administrative 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 responsible for:

(a) The total program of the center and its affiliates in accordance with the center's written policies; and

(b) [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, if [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 a client record [records] shall:

1. Be disclosed ~~[only]~~ to an authorized person; and
2. Not be disclosed to an unauthorized person. [persons:]

(d) Each medical record shall contain:

1. An identification sheet;
2. Information on the purpose for seeking a service;
3. A history of findings and treatments rendered;
4. Screening information pertaining to the problem;
5. Staff notes on services provided;
6. Pertinent medical, psychiatric and social information;
7. Disposition;
8. Assigned status;
9. Assigned therapists; and

10. 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 shall be [is] a psychiatrist, certified or licensed psychologist, psychiatric nurse or a qualified social worker. The program director may ~~[also]~~ be the executive director;

(b) 1. A board-certified or board-eligible psychiatrist who shall:

a. Be responsible for treatment planning;

b. Provide psychiatric service as indicated by client needs; and

c. Supervise and coordinate the provision of all psychiatric services by the center;

2. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position; [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 the 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 including [such as:] individual, family, or group therapy, play therapy, behavior modification, or chemotherapy.

(3) Treatment plan.

(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual treatment plan signed by a clinically licensed or certified professional provider of the treatment.

(b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity [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).

(c) 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 a person who requires [those persons who require] less than twenty-four (24) hour a day care, and [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 a person [persons] requiring full-time inpatient care. A center that does not have an affiliation contract in effect shall be considered to be in compliance with this requirement if the center documents a good faith effort to enter into an affiliation contract; [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 a nonscheduled visit [visits] during a time [times] of increased stress or crisis. The outpatient services shall provide diagnosis and evaluation of a psychiatric problem and a referral [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 a person in a [persons in] crisis situation [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 that enables a client [so that clients] receiving an emergency service to [services can] be readily transferred to another service [other services] of the center as client needs dictate; and

(e) Consultation and education services for an individual [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 a [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 if [when] appropriate.

(6) Medications. A treatment [Treatments] involving medication or [medications and] chemotherapy shall be administered under the direction of a licensed physician and:

(a) Records of all medication or [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 prescription [prescriptions], with a limit of no more than three (3) refills, shall be kept in the medical record;

(c) Blood or another laboratory test or examination [and other laboratory tests and examinations] shall be performed in accordance with accepted medical practice on each individual [all individuals] receiving medication [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) A medication [Medications] shall be stored in the originally received container [containers] unless transferred to another container [other containers] by a pharmacist or another person licensed to transfer the medication [do so]; and

(g) Medication [All medications] kept in the center shall be kept in a locked cabinet.

1. A controlled substance [substances] shall be kept under

double lock (e.g., in a locked box in a locked cabinet).

2. There shall be a controlled substances record, in which is recorded:

- a. The name of the patient;
- b. The date, time, dosage, balance remaining and method of administration of all controlled substances;
- c. 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
- d. The name of the nurse who administered it, or staff who supervised the self-administration.

3. A nursing medication cabinet [cabinets] shall be kept locked and access shall be restricted to a designated medication nurse [nurses].

Section 5. Facility Specifications. (1) A facility [~~The facilities~~] housing a community mental health-mental retardation center [~~centers~~] shall be a general purpose buildings [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 if [where] applicable and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:050 [~~10:020~~], as amended; and

(b) Requirements for making a building or facility [buildings and facilities] accessible to and usable by an individual [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) A facility [~~All facilities~~] shall be currently approved by the Department of Housing, Buildings and Construction [~~Fire Marshal's Office~~] in accordance with 815 KAR 10:050 [~~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.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(As Amended at ARRS, April 15, 1998)

904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS Chapter 13B, 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 406.027, 42 USC 651 et seq., EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [~~The Cabinet for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments.~~] Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

Section 1. Collection of Maintenance. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

- 1. As the primary tool for child support collection; and
- 2. As necessary to facilitate enrollment of a child through an employer in an available health insurance plan.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

(c) If a noncustodial parent, or obligor, has more than one (1) child support wage assignment against him, the child support agency shall allocate and distribute child support as specified by KRS 405.467(7) and (8).

(d) If current support and an arrearage amount is owed and is to be paid through a wage withholding order, and no specified arrearage payment amount is ordered by the court, the cabinet shall determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent.

(e) If the noncustodial parent, or obligor, no longer owes a current child support payment, the cabinet shall determine:

- 1. The arrearage payment to be equal to the last court or administratively ordered obligation amount; and
- 2. The frequency of the arrearage payment.

(f) A noncustodial parent, or obligor, shall not be obligated to pay current support if:

- 1. [when] Parental rights have been terminated; or
- 2. [when] All children of a particular order are emancipated.

(g) An employee-paid share of the cost of health insurance shall not be deducted if, after child support and maintenance are deducted. [~~No amount of an employee-paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted.~~]

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or

2. Only a portion of the monthly amount needed to purchase health insurance is available.

(h) If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(i) To comply with the advance notice requirements of KRS 405.467(4), if [when] the address of the noncustodial parent, or obligor, is known, the agency shall send written notification to the noncustodial parent, or obligor, within fifteen (15) calendar days of the:

- 1. Request for wage withholding; or
- 2. The date the arrearage of the noncustodial parent, or obligor, is equal to the monthly obligation amount.

(j) If the address of the noncustodial parent, or obligor, is unknown, the cabinet shall provide advance notice within fifteen (15) calendar days of locating the noncustodial parent, or obligor.

(k) The advance notice shall inform the noncustodial parent, or obligor:

- 1. He has ten (10) days to contest the withholding; [and]
- 2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and
- 3. Withholding shall apply to the current and any subsequent employer.

(l) In addition to the requirements of KRS 405.467(5)-(11), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

- 1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date

the amount is withheld from the noncustodial parent's, or obligor's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the noncustodial parent, or obligor, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each noncustodial parent, or obligor;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the noncustodial parent, or obligor, terminates employment and provide information to the agency as required by KRS 405.465.

(m) The noncustodial parent, or obligor, shall keep the child support agency informed of his current employer, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information.

(n) The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the noncustodial parent, or obligor, is employed to implement interstate withholding.

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the employer of the noncustodial parent, or obligor's employer shall:

a. Send notice to the noncustodial parent, or obligor, within fifteen (15) calendar days of locating the noncustodial parent, or obligor, or his employer;

b. Provide the noncustodial parent, or obligor, with the opportunity to contest the withholding; and

c. Send notice to his employer and to the noncustodial parent, or obligor.

5. If the noncustodial parent, or obligor, is no longer employed in the state, the child support agency shall:

a. Notify the state in which the custodial parent resides;

b. Provide the state with the address of the noncustodial parent or obligor, if known; and

c. Provide the name and address of a new employer, if known. [The child support agency shall notify the state in which the custodial parent resides when the noncustodial parent, or obligor, is no longer employed in the state and provide the state with both the noncustodial parent's, or obligor's, and new employer's name and address, if known.]

6. If the withholding is not implemented in the state where the support order is filed, it shall be implemented according to the laws and procedures of the state where the noncustodial parent, or obligor, is employed. [Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the noncustodial parent, or obligor, is employed shall apply.]

(o) The child support agency shall terminate wage withholding if [when] there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state

employment security agency, shall provide withholding of a child support obligation from a noncustodial parent, or obligor, receiving unemployment compensation under the following conditions:

1. A noncustodial parent, or obligor, who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the noncustodial parent, or obligor;

or

b. A notice of claim of intent to withhold is completed by the child support [enforcement] agency if [when] the noncustodial parent, or obligor, fails to sign an agreement to withhold within fifteen (15) calendar days, **and there is no mistake in fact or law as to the validity of the child support obligation.** [-and]

~~[c. No mistake in fact or law is proven which causes the noncustodial parent, or obligor, to be found not owing.]~~

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the noncustodial parent, or obligor.

(3) Federal tax refund offset **and administrative offset.**

(a) Past-due child support, medical support payments (if a specified dollar amount is included in the order) maintenance, K-TAP and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least \$150 and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency **verifies** [shall verify] the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage **is** [shall be equal to] no less than \$500 dollars and **does** [may] not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The child support agency **has** [shall have] verified the accuracy of the arrearage and **has** [have] a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage **is** [shall be] owed on behalf of a child who lives with the client and [who] is a minor as of December 31 of the year in which the case is submitted for offset;

5. The child support agency **has calculated** [shall calculate] an assigned arrearage;

6. The child support agency **has verified** [shall verify] the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(c) A case submitted for federal tax refund offset shall be subjected to federal administrative offset of nonexempt federal payments. Nonexempt federal payments shall be denied to individuals owing child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(4) State income tax refund (offset).

(a) A K-TAP, foster care, or medical support arrearage which is

owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;
2. The noncustodial parent's, or obligor's, name and Social Security number are known;
3. The arrearage is at least twenty-five (25) dollars; and
4. The arrearage has been verified as accurate.

(b) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation are [is] met and the arrearage is [arrearages are] not less than \$150.

Section 3. Kentucky Transitional Assistance Program (K-TAP) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of K-TAP shall:

- (a) Be made payable to the child support agency; and
 - (b) Be reported to the K-TAP agency within ten (10) working days of the end of the month in which the support is received.
- (2) A child support payment that makes the K-TAP family ineligible for K-TAP shall be reported to the child support agency by the K-TAP agency.

(a) If the family is ineligible for a K-TAP payment, the child support agency shall:

1. Distribute the amount of child support collected; and
2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for a K-TAP payment or if a hearing is requested:

1. The K-TAP agency shall notify the child support agency; and
2. The child support agency shall distribute the collection as specified in Section 6 [3(7)] of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for K-TAP is determined but prior to the last assistance payment being issued shall be used:

- (a) To reimburse the state for any assistance paid; and
 - (b) To pay any excess to the family.
- (5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:
- (a) Determine the collected amount the family would have received; and
 - (b) Forward any amount in excess of the assistance payment to the family.
- (6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

- (1) Made payable to the child support agency; and
- (2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) Federal tax refunds intercepted in Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by a noncustodial parent, or obligor, and the appeal is resolved, payment shall be made to the family or

refunded to the noncustodial parent, or obligor, within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Federal tax refunds intercepted in nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) State tax refunds intercepted shall be distributed according to specifications in Section 3, 4, 6, or 8 of this administrative regulation.

(4) If the noncustodial parent, or obligor, contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Escrow and Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) In K-TAP cases, if the obligation for current support and the collection of current support exceed the grant paid for the month in which the collection was made:

(a) The difference between the grant and the obligation or the collection, whichever is less, shall [will] be considered escrow and [will] be distributed as follows:

1. The portion of the escrow that represents the federal share of the collection (as determined by the Medicaid match rate) shall [will] be sent to the federal government.

2. The portion of the escrow payment which represents the state share (as determined by the Medicaid match rate) of the collection shall [will] be sent to the family.

(3) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) ~~If the collected amount is less than fifty (50) dollars;~~ The responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the K-TAP assistance payment.

(3) Collection of child support in the month after the month the family receives its last K-TAP assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) If [When] the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of a lien [liens] on personal or real property if [when] an arrearage is equal to or greater than one (1) month's obligation;

(b) Report to credit bureaus; [and]
 (c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license; and
 (d) Certify a case [cases] for passport denial.
 (2) The Cabinet for Families and Children shall:
 (a) Provide information to consumer reporting agencies as specified by KRS 205.768; and
 (b) Provide advance written notice to the noncustodial parent, or obligor, of the release of the information required by KRS 205.768(2).
 (c) The name of the noncustodial parent, or obligor, shall be:
 1. Deleted from the list provided to consumer reporting agencies if [when] the advance notice is returned as undeliverable, and subsequent location efforts are unsuccessful; or
 2. Added to the list provided to the consumer reporting agencies if [when] subsequent location efforts are successful.
 (3) Denial or suspension of driver's license.
 (a) The cabinet shall as provided by KRS 186.570(2):
 1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued on or after [beginning] January 1, 1994[-or thereafter]; and
 2. Contact the contracting official to determine if the contracting official intends to pursue judicial action.
 3. If the contracting official determines that judicial action will not be taken, advise the contracting official of the intent of the agency to proceed with the referral to revoke or deny a driver's license.
 4. Send by first class mail to a noncustodial parent, or obligor, who holds a valid Kentucky driver's license and who has the ability to pay support:
 a. A notice of intent to request denial or suspension of a driver's license; and
 b. A noncustodial parent, or obligor, answer to notice of intent.
 5. Notify the noncustodial parent, or obligor, that the only basis for resolution of the dispute shall be:
 a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year;
 b. The wrong individual has been identified;
 c. A bond is posted for the total arrearage which has accrued since January 1, 1994;
 d. A payment agreement is entered into by the noncustodial parent, or obligor, to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:
 (i) Fifty (50) percent if the arrearage owed is less than \$1,000; or
 (ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or
 (iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or
 e. The noncustodial parent, or obligor, pays the total arrearage which has accrued since January 1, 1994.
 (b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;
 (c) If the noncustodial parent, or obligor, requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the noncustodial parent, or obligor, answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:
 1. Within ten (10) working days of the noncustodial parent's, or obligor's, response, schedule and hold an interview with the noncustodial parent, or obligor;
 2. Attempt to resolve the dispute at the time of the interview; and
 3. If the dispute is not resolved at the time of the interview, forward the noncustodial parent's, or obligor's, written request for a hearing to the agency responsible for conducting the dispute hearing.
 (d) [The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview and a written request from the noncustodial parent, or obligor, to withdraw the hearing request shall be sent; or
2. A resolution to the dispute has not been reached and the hearing request remains in effect.
 (e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:
 1. The noncustodial parent, or obligor, makes full payment of the total arrearage that may have accrued since January 1, 1994;
 2. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (a)5d of this subsection; or
 3. The noncustodial parent, or obligor, posts a bond for the total arrearage which has accrued since January 1, 1994.
 (e) [(f)] If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license shall not be sent.
 [(f)] [(g)] If the noncustodial parent, or obligor, does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Families and Children shall refer the name of the noncustodial parent, or obligor, to the Transportation Cabinet for the denial or suspension of the driver's license, unless:
 1. The noncustodial parent, or obligor, makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Families and Children;
 2. The noncustodial parent, or obligor, posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or
 3. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which has accrued since January 1, 1994 as determined by paragraph (a)5 [3]d of this subsection.
 (g) [(h)] The Cabinet for Families and Children shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if:
 1. The noncustodial parent, or obligor, makes full payment of the arrearage;
 2. The noncustodial parent, or obligor, posts a bond for the total arrearage amount; or
 3. The noncustodial parent, or obligor:
 a. Makes a good faith payment which equals three (3) months' current support; and
 b. Enters into a payment agreement to pay the specified amount on the remaining arrearage which has accrued since January 1, 1994 as determined by paragraph (a)5 [3]d of this subsection.
(4) Denial of passport.
(a) The cabinet shall certify for passport denial to the Secretary of the U.S. Department of Health and Human Services any case for which the arrearage exceeds \$5000.
(b) If a timely appeal is filed by a noncustodial parent, or obligor, pursuant to the notice as set forth in the Advance Notice of Intent to Collect Past-due Support, Form CS-122, edition 10/97, the appeal is resolved and the finding is that the arrearage is less than \$5000, the U.S. Secretary of State shall be notified by the cabinet to issue a passport to the noncustodial parent, or obligor.
(c) The noncustodial parent, or obligor, whose arrearage exceeds \$5000, shall be deleted from passport denial if [when]:
1. An arrearage judgment exists and the noncustodial parent, or obligor, is in full compliance with payments ordered in the judgment;
2. The noncustodial parent, or obligor, makes a payment bringing the arrearage to less than \$5000; or
3. In cases with an arrearage and no ordered arrearage payment,

the noncustodial parent, or obligor, agrees to make satisfactory payment arrangements. The noncustodial parent, or obligor, shall:

- a. Post a bond for the total amount due; or
- b. Enter into a payment agreement to pay current support plus a specified monthly payment on the total arrearage. The monthly arrearage payment shall be:

- (i) In the first month, a \$750 lump sum payment plus ten (10) percent of the arrearage balance as of the date of the agreement; and
- (ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement or the remaining balance if the remaining balance is less than ten (10) percent of the arrearage that was due on the date of the agreement.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 as described in 904 KAR 2:400, Section 4.

Section 11. **Incorporation by Reference.** (1) **The following material is incorporated by reference:**

(a) **CS-44 "Notice of Intent to Request Denial or Suspension of Driver's License", (2/97 Edition), Cabinet for Families and Children;**

(b) **CS-63 "Notice to the Transportation Cabinet", (2/97 Edition), Cabinet for Families and Children;**

(c) **CS-78 "Payment Agreement", (2/97 Edition), Cabinet for Families and Children;**

(d) **CS-111, "Child Support Received Affidavit", (2/97 Edition), Cabinet for Families and Children;**

(e) **CS-122, "Advance Notice of Intent to Collect Past-due Support", (10/97 Edition), Cabinet for Families and Children;**

(f) **CS-123, "State Tax Preoffset Letter", (7/96 Edition), Cabinet for Families and Children;**

(g) **CS-148, "Custodial Parent Affidavit Letter", (2/97 Edition), Cabinet for Families and Children;**

(h) **CS-149, "Custodial Parent Affidavit of Support Paid", (5/97 Edition), Cabinet for Families and Children.**

(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) Forms necessary for the collection and distribution of child support and medical support are incorporated [effective February 15, 1995]. These forms include:**

(a) **CS-44, "Notice of Intent to Request Denial or Suspension of Driver's License, edition 2/97" [revised 2/97];**

(b) **CS-63, "Notice to the Transportation Cabinet, edition 2/97" [revised 2/97];**

(c) **CS-78, "Payment Agreement, edition 2/97" [revised 2/97];**

(d) **CS-111, "Child Support Received Affidavit, edition 2/97" [revised 2/97];**

(e) **CS-122, "Advance Notice of Intent to Collect Past-due Support, edition 10/97" [revised 7/96];**

(f) **CS-123, "Letter to Obligated Parent Concerning Intercept of State Tax Return, edition 7/96" [revised 7/96];**

(g) **CS-148, "Custodial Parent Affidavit Letter, edition 2/97" [revised 2/97];**

(h) **CS-149, "Custodial Parent Affidavit of Support Paid, edition 5/97" [revised 5/97].**

(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 30, 1998

FILED WITH LRC: February 10, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, April 15, 1998)

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. (1) "Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.

(2) **"Wellness monitoring" means a process in which a registered nurse:**

(a) **Evaluates the level of wellness of a recipient to determine if:**

1. **The recipient is properly using the medical health services being provided; and**

2. **The health of the recipient is sufficient to maintain him in his place of residence without more frequent skilled nursing intervention; and**

(b) **Does not provide direct treatment to the recipient.**

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) **An individual eligible for Medicaid who is an inpatient or resident of a facility identified in subsection (2) of this section:**

(a) **May apply for an SCL service while the individual is an inpatient or resident of the identified facility; and**

(b) **Shall not receive the service while the individual is an inpatient or resident of the identified facility. [Nothing in subsection (2) of this section shall preclude an individual eligible for Medicaid from applying for supports for community living services.]**

(4) 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, **if aggregate expenditures for the program are projected to exceed the corresponding institutional cost of comparable services**, as provided for in 42 USC 1396n(c)(3).

(5) [(4)] The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.

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(6) [(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, **which shall be a:** ~~[-The residential options are:]~~

1. Group home;
2. Staffed residence; **or [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; **or [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 **the individual's home and not in an alternative living arrangement as identified in paragraph (a) of this subsection [their own home, i.e., not a group home, family home, staff residence]**, to assist, train or support in activities including:

1. Laundry services;
2. Meal preparation;
3. Household care **or [and]** maintenance;
4. Daily living skills;
5. Socialization;
6. Relationship building;
7. Leisure choices; **or [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; **or [and]**
9. Vocational training;

(j) Supported employment for a participating individual **if the services are not otherwise available under a program funded by 29 USC 701 et seq. or PL 94-142 [eligible under Health Care Finance**

~~ing 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; **or [and]**

2. Refer the individual to the appropriate medical services;

(m) Specialized medical equipment and supplies; **or [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 **the** procedures **established [described]** in the Department for Medicaid Services Supports for Community Living Manual, **which is** 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 **shall be [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 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

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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 appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563. ~~[An adverse action regarding a Medicaid beneficiary may be appealed in accordance with 907 KAR 1:563 (1:560).]~~

(2) A [No] decision to terminate an individual or to reallocate placement subject to appeal shall not be final until an order is issued in accordance with 907 KAR 1:563. ~~[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: March 13, 1998

FILED WITH LRC: March 13, 1998 at noon

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (As Amended at ARRS, April 15, 1998)

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, which is 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 the most recent available ~~[an]~~ annual cost report as of June 1 preceding the July 1 rate setting with cost trended and indexed through June 30 of the rate year; 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, or ~~[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.

(5) ~~[(6)]~~ Utilizing the formula established ~~[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.

(6) ~~[(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, or ~~[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

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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 ~~if~~ **[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 , et seq.

Section 6. Auditing and Reporting. (1) A participating provider shall:

~~(a) [be required to]~~ Maintain fiscal and service records for a period of not less than five (5) years; and

~~(b) [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. Appeals Rights. **(1) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.**

(2) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563 [may be appealed in accordance with 907 KAR 1:671].

Section 8. 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: March 13, 1998

FILED WITH LRC: March 13, 1998 at noon

CABINET FOR HEALTH SERVICES

Department for Mental Health Mental Retardation Services
(As Amended at ARRS, April 15, 1998)

908 KAR 1:380. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs.

RELATES TO: KRS 222.211 ~~[222.231]~~

STATUTORY AUTHORITY: KRS 194.050, 222.211, ~~[222.231]~~

EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050,

222.211 ~~[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 an individual, system, or community ~~[individuals, systems, and communities]~~ participating in a prevention program has ~~[prevention programs have]~~ changed as a result of that program.

(8) "Prevention" means as defined in KRS 222.211(1).

(9) "Preventionist" means any individual or certified prevention professional who receives remuneration for an alcohol or other drug prevention program. ~~[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) **An** ~~[No]~~ agency receiving remuneration for any program shall not 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).

(3) 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.

(4) [(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.

(5) [(4)] The license shall be conspicuously posted in a public area at ~~[of each separate facility operated by]~~ the agency and shall indicate the year the license was issued or renewed.

(6) [(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 document ~~[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

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the date when each violation shall be corrected.

(7) [(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.

(8) [(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.

(9) [(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 agency [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 a decision [decisions] which may be influenced by a member's business interest;

3. Appointing an executive director who shall be [principally] responsible for the day-to-day operation of the agency;

4. Adopting an administrative structure and establishing a line [lines] of authority for all prevention programs operated by the agency;

5. Documenting administrative structure and lines of authority on an organizational chart, including the name of each [names-of] current governing board member [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 a prevention agency [agencies], and in a multiservice agency [agencies] for that particular component of the board that provides oversight to the prevention program; and

11. Meeting as a whole at least quarterly and keeping a written record [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 a prevention program [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:

1. Be outlined in the agency's policy and procedures manual; and
2. [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 an area [areas] that enables a volunteer or [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 a program [programs] to determine the quality of the service. [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) Protection [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 check [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 action [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) A provision [Provisions] for ensuring an alcohol and drug free work place to include action [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) A procedure [Procedures] for providing an employee with access to his [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 a revision as it is [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;

(c) A method [Methods] for determining the needs of the population [populations] to be served and a program [programs] provided in response to an [these] identified need [needs];

(d) A method for tailoring a program [Methods for tailoring programs] to the characteristics of a specific target audience [audiences] including age, gender, drug use patterns, racial, ethnic and cultural heritage;

(e) A method [Methods] to be used to review an activity plan [all activity plans], information, material [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) A method [Methods] for soliciting input and involving the community or identified target audience in planning;

(g) A method [Methods] for making or receiving a prevention

consumer referral [referrals] within or outside the agency;

(h) A method [Methods] for referring or delivering a service [services] to a consumer [consumers] having special speech, language, visual or hearing needs;

(i) A method [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 a needs assessment [assessments];

(b) [Any] Collaboration with a community or other agency [agencies];

(c) Material and curricula reviewed;

(d) Program activity or service [activities and services] delivered;

(e) Case management information pertaining to early intervention and prevention programs directed at a specific audience [audiences] including the following:

1. Screening and assessment results;

2. A prevention service [services] provided;

3. Research data showing effectiveness of a prevention program [programs] used for a specific target audience [the specific target audiences];

(f) A background check [checks] conducted on a volunteer [volunteers] working with a minor [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. An alternative which provides [Alternatives which provide] for the participation of a target population in an activity that excludes [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 a community member [community members] to identify a problem or resource [problems and resources] and to appropriately select the prevention strategy [strategies] that will more effectively impact the behavior [behaviors] relating to alcohol and other drug use. Methods shall include involving the community [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 participant. The method [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 an individual to make a healthy choice [individuals to make healthy choices] about alcohol and other drug use;

b. Help him [them] develop the competency [competencies] needed to make a choice [these choices];

c. Prepare him [them] to develop and implement a prevention program [prevention programs] in a particular setting [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 limited contact, 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 a drug on an individual, family or community; [other drugs on individuals, families and communities];

c. Information to increase the perception [perceptions] of risk; and

d. Identification of an available prevention program or service [programs and services].

7. Problem identification and referral which is designed to identify a person who is beginning to experience an alcohol or [persons who are beginning to experience alcohol and] other drug problem [problems] or those for whom the risk of developing a problem [problems] is particularly high. Methods shall include screening, intensive preventive education, or referral for a clinical assessment;

(h) Documentation of a consumer referral [referrals] made and a source [sources] used within or outside the agency;

(i) Process and outcome evaluation results;

(j) A follow-up plan [plans]; and

(k) Fee [Fees] assessment and collection.

Section 8. Consumer Rights. An agency licensed to provide an alcohol or other drug prevention program [alcohol and other drug prevention programs] shall have written policies and procedures for ensuring the rights of the consumer which shall include:

(1) An assurance [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 agency [facility] with the name, address and telephone number of the agency's ombudsman [ombudsperson];

(3) Assurance [Assurances] of the confidentiality of consumer's alcohol, tobacco, and other drug issues; and

(4) The grievance procedure [Grievance procedures] posted in the agency [facility] which shall include at a minimum:

(a) The time frame [Time frames] for reviewing and responding to a consumer complaint [consumer complaints];

(b) The requirement [Requirements] for the documentation of a grievance [grievances] in each consumer record and in a central agency incident file; and

(c) The requirement of [Requirements for] referring to the appropriate authority an allegation [any allegations] of abuse or neglect in accordance with:

1. KRS 209.030 regarding the abuse or neglect of an adult [adults]; and

2. KRS 620.030 regarding the abuse or neglect of a minor [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) A violation of a licensure standard [Violations of licensure standards] may result in the revocation of a license.

(2) The following violations shall result in the revocation of a license; [Conditions which shall result in the revocation of a license include the following:]

(a) A [Any] violation creating an immediate danger to the prevention consumer;

(b) Fraud in obtaining a license or in connection with a service [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) A [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 revocation [suspension] of a license.

(a) Plan of correction. If [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 reason [reasons] for the adverse action [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

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action by the cabinet as provided by law.

ELIZABETH R. WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 11 a.m.

ADMINISTRATIVE REGISTER - 2392

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Amended After Hearing)

601 KAR 1:005. Safety administrative regulations.

RELATES TO: KRS Chapters 138, 281, 49 CFR Parts 40, 382-383, 385, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 281.880 through 281.888, 49 CFR Parts 40, 382-383, 385, 390-397

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky. The safety requirements of this administrative regulation essentially conform to the provisions of the federal safety requirements. While Kentucky's requirements are more lenient in minor intrastate areas, the Federal Highway Administration has determined that this administrative regulation essentially complies with the federal mandate.

Section 1. Definitions. (1) "City bus" means as defined in KRS 281.013(1). "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

- (a) To transport agricultural products from his farm;
- (b) To transport farm machinery or farm supplies to his farm; or
- (c) Generally thought of as farm machinery; and
- (d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.]

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

- (a) To transport agricultural products from his farm;
- (b) To transport farm machinery or farm supplies to his farm; or
- (c) Generally thought of as farm machinery; and
- (d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" means as defined in KRS 281.013(2).

(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. All commercial motor vehicles and their operators meeting the definitions set forth in 49 CFR 390.5 operating ~~operated~~ for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) 49 CFR Part 40, as effective October 1, 1997 [1996], Procedures for Transportation Workplace Drug Testing Programs;

(2) 49 CFR Part 382, as effective October 1, 1997 [1996], Controlled Substances and Alcohol Use and Testing;

(3) 49 CFR Part 383, as effective October 1, 1997 [1996], Commercial Driver's License Standards; Requirements and Penalties;

(4) 49 CFR Part 385, as effective October 1, 1997 as amended at 62 Fed. Reg. 60042, November 8, 1997, Safety Fitness Procedures;

(5) 49 CFR Part 390, as effective October 1, 1997 [1996], General;

(6) ~~[(5)]~~ 49 CFR Part 391, as effective October 1, 1997 [1996], Qualifications of Drivers;

(7) ~~[(6)]~~ 49 CFR Part 392, as effective October 1, 1997 [1996], Driving of Motor Vehicles;

(8) ~~[(7)]~~ 49 CFR Part 393, as effective October 1, 1997 as amended at 63 Fed. Reg. 1383, January 9, 1998 and 63 Fed. Reg. 8330, February 18, 1998 [1996], Parts and Accessories Necessary for Safe Operation;

(9) ~~[(8)]~~ 49 CFR Part 395, as effective October 1, 1997 [1996], Hours of Service of Drivers;

(10) ~~[(9)]~~ 49 CFR Part 396, as effective October 1, 1997 [1996], Inspection, Repair and Maintenance; and

(11) ~~[(10)]~~ 49 CFR Part 397, as effective October 1, 1997 [1996], Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) City buses and suburban buses are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Parts 382 and 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(2)(a) A motor vehicle operated ~~[Vehicles owned]~~ by the federal government, a state government, a county government, a city government, or a board of education is ~~are~~ not required to comply with the federal regulations adopted in this administrative regulation.

(b) An ~~An~~ [Any] operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(c) The operator of a vehicle ~~[operators of the vehicles]~~ specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3)(a) A motor vehicle which is ~~[Motor vehicles which are]~~ used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier is ~~are~~ not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements.

(b) It is ~~They are, however,~~ required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4)(a) A motor vehicle which is ~~[Motor vehicles which are]~~ used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours is ~~are~~ not required

to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements.

(b) ~~It is [They are, however,]~~ required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for a transporter [transporters] of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is [motor vehicle operators who are] operating a vehicle in an intrastate commerce is [are] not required to be twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, he [they] shall be at least eighteen (18) years of age.

(6) A utility motor carrier if [Utility motor carriers while] operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore service.

(7)(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name and location of the motor carrier in the same manner as required pursuant to 49 CFR Part 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY". [Motor carrier vehicles operated exclusively in intrastate commerce may comply with the provisions of 601 KAR 1:200, Section 3, rather than 49 CFR Part 390.21.]

(9) A Kentucky licensed commercial driver operating a passenger transportation vehicle [vehicles] on behalf of a private motor carrier of passengers contrary to 49 CFR Part 391.68(d), shall not be exempt from the sections of 49 CFR Parts 391.41 and 391.45 requiring [as require] a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus [Buses] shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat [Seats] shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee [Employees] in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator [All operators] shall take into consideration the health and welfare of his [their] passengers and control his [their] operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" as revised April 1, 1997 [1996] by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor [vehicle] is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, an officer or inspector [officers] of the Division of Motor Vehicle Enforcement shall be [are] authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) [However,] The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. Medical examiner is defined in 49 CFR 390.5 as a person who is licensed, certified, and/or registered, in accordance with applicable state laws and administrative regulations, to perform physical examinations. According to Kentucky state law this shall include the following:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor [Chiropractors] licensed by the Kentucky State Board of Chiropractic Licensure.

Section 8. Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370 on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 9. Relief and Safety Demonstration Project. (1) In accordance with Section 344 of the National Highway System Designation Act of 1995 (PL 104-59, 109 Stat.568 (1995)), until June 10, 2000, the Federal Highway Administration is allowing an operator of a commercial motor vehicle with a gross vehicle weight rating over 10,000 pounds but not more than 26,000 pounds limited exemptions

from the motor carrier safety regulations. These exemptions and the criteria for participating in the federal program are set forth in the "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance".

(2) A motor carrier approved for participation in this project will be issued a "Roadside Enforcement Letter" by the Federal Highway Administration.

(3) The Transportation Cabinet shall honor the exemptions of each valid "Roadside Enforcement Letter" if the motor vehicle is being operated under the criteria set forth in the "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance".

Section 10. Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 CFR Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 11. Random Alcohol Testing Rate. The 1998 random alcohol testing rate required by 49 CFR Part 382 shall be ten (10) percent.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) "North American Uniform Out-Of-Service Criteria" revised April 1, 1998 [1997] [1996] by the Commercial Vehicle Safety Alliance;

(b) 62 Fed. Reg. 16370, April 4, 1997;

(c) 62 Fed. Reg. 60042, November 8, 1997;

(d) 63 Fed. Reg. 1383, January 9, 1998;

(e) 63 Fed. Reg. 8330, February 18, 1998; and

(f) [fe] "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance", July 1997 edition issued by the Federal Highway Administration.

(2) The material incorporated by reference in this administrative regulation may be reviewed at any of the weigh stations operated by the Transportation Cabinet. Further, the material 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

E. JEFF MOSLEY, Office of General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 9, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: 30,000 motor carriers operating in Kentucky; 790,000 commercial trucks operating in Kentucky; and 118,000 commercial drivers licensed 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: The changes in this administrative regulation should have no effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administra-

tive regulation should have no effect on the cost of living or employment.

(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 changes in this administrative regulation should have no effect on compliance, reporting, and paperwork for the motor carrier industry.

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

(3) Effects on the promulgating administrative body: The Transportation Cabinet is no longer assisting the Federal Highway Administration, Office of Motor Carriers in their on-premise safety evaluation of interstate motor carriers. However, the Motor Vehicle Enforcement unit, which had been performing this work, is now well-trained and will begin the on-premise safety evaluation of intrastate motor carriers.

1. First year: The costs will not change since only the focus of this safety management unit has changed.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The safety management unit will complete the safety rating forms for intrastate motor carriers.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Road Fund as authorized in the Transportation Cabinet, Department of Vehicle Regulation Biennial Budget. A significant portion of these funds are made available to Kentucky as a grant from the Federal Motor Carrier Safety 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: No anticipated economic impact.

(b) Kentucky: No anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The General Assembly provided statutory authority for the intrastate on-premise motor carrier safety management program several years ago. Now that the safety unit has been hired and trained, the alternative of not implementing the intrastate safety rating program was rejected. The Transportation Cabinet adopted a random alcohol testing rate of 10% for calendar year 1998. The Federal Highway Administration published a notice of the 10% testing rate in the "Federal Register" on January 14, 1998. In order to not be more stringent than the federal mandate, the Transportation Cabinet also adopted the 10% testing rate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: With the added focus on the safety of intrastate motor carriers, highway safety on the less traveled highways which are traditionally used more by intrastate motor carriers should increase.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The highway safety improvements anticipated with the implementation of this program would not occur without the implementation of the intrastate on-site motor carrier inspection program.

(c) If detrimental effect would result, explain detrimental effect: The intrastate motor carriers are required to maintain the same level of safety as are the interstate motor carriers. However, we have been told that since these trucks do not routinely operate on the interstate highways and are therefore not subject to routine scrutiny at the weigh stations, some companies do not take as much care in the maintenance of the vehicles as is required. Implementing this administrative regulation change will aid in enforcing the safety

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requirements which have been in effect for years. Not implementing this change will allow the enforcement of the safety requirements relating to the intrastate segment of the trucking industry to continue to be spotty. This in turn, will not improve highway safety.

(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: The amendments to the federal motor carrier safety regulations also included many minor technical amendments to keep the regulations accurate and up to date.

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are imposed on the owners and operators of larger vehicles.

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 390 - 399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

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 Part 40, Parts 382 - 383 and 390 - 397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. Commercial driver' license standards for the issuance, testing and withdrawal of a CDL;

b. Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

c. Establishes the maximum number of hours a commercial driver may be on-duty and how he must keep a record of the amount of time he has worked;

d. Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

e. Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

f. Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

g. Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified

inspectors or mechanics; and

h. Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, with reluctantly given federal approval, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. In most instances, the effect will be on the county road or public works department.

3. State the aspect or service of local government to which this administrative regulation relates. The local government drivers of the commercial vehicles above 26,000 pounds will have to be drug and alcohol tested on a preemployment, random, postaccident, and for cause basis.

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

Revenues (+/-): None

Expenditures (+/-): It will cost local governments approximately \$100 for each drug and alcohol test performed. The cost to each unit of local government depends on the number of commercial drivers it employs.

Other Explanation:

TRANSPORTATION CABINET Department of Highways Permits Branch (Amended After Hearing)

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdic-

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tion to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS. The criteria included in this administrative regulation are consistent with the guidelines set forth in the Manual on Uniform Traffic Control Devices.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR ~~Chapter 6~~ [1-194] to administer the tourist oriented directional signs program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels and TODS.

(3) "Contractor year" means a one (1) year period beginning January 1, of each calendar year.

(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(5) "Department" means the Kentucky Department of Highways.

(6) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(7) "Fully-controlled access highway" means a highway that:

(a) Gives preference to through traffic;

(b) Has access only at selected public roads; and

(c) Does not have a highway intersection or at-grade crossing.

(8) "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.

(9) ~~(8)~~ "Information panel" means an official sign placed within the highway right-of-way with space for one (1) or more individual TODS to be attached to it and which may display the legend "TOURIST ACTIVITIES".

(10) ~~(9)~~ "Intersection" means a junction of two (2) or more highways which meet and cross at a common point requiring the intermingling of traffic streams between the highways.

~~(10) "Interstate or parkway" means a highway that has fully-controlled access and is part of the National Interstate and Defense System of Highways or is now or once was a toll road.]~~

(11) ~~(10)~~ "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(12) ~~(11)~~ "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(13) ~~(12)~~ "Public road" means all state-maintained roads other than interstate or parkway highways.

(14) ~~(13)~~ "Ramp" means the on- or off-access road from the interstate highway or parkway to or from the first public road.

(15) ~~(14)~~ "TOD trailblazer" means a reduced-sized TODS used in areas where the speed limit is posted with a limit of forty-five (45) miles per hour or less (seventy-two and four-tenths (72.4) kilometers per hour) to direct the traveling public to a tourist attraction.

(16) ~~(15)~~ "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(17) ~~(16)~~ "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational, or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

(18) ~~(17)~~ "Tourist oriented directional sign" or "TODS" means an individual tourist information sign paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and located on an information panel on the right-of-way of

a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS or TOD trailblazer sign on an information panel shall be made on an "Application for Highway Tourist Oriented Directional Signage [Signing] (TODS)" form prepared by the Kentucky Logos [Sign Group], Inc. ~~(in May, 1994. This form is incorporated by reference in Section 17 of this administrative regulation.)~~

~~(2) [The notice by an activity or business to the Department of Highways' contractor of the number, type, and placement of each TODS shall be on "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference in Section 17 of this administrative regulation.]~~

~~(3) [The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logos [Sign Group], Inc. (in November 1995.) Addenda to this form may be included in the contract where appropriate. [This form is incorporated by reference in Section 17 of this administrative regulation.]~~

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On a fully-controlled access highway [interstates or parkways];
2. On the on/off ramps of a fully-controlled access highway [interstates or parkways];
3. Where there is insufficient space to locate both other traffic control devices and the information panels; [and]
4. So that the traffic is directed onto a fully-controlled access highway [an interstate or parkway]; and
5. Except for TOD trailblazers, on those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which TODS

will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;
2. A left turn;

3. No turn if the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

(g) The spacing requirements set forth in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d) A separate advance information panel shall be installed for each of the directions of traffic on an prior to the approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;
2. A left turn;

3. No turn if the activity or business is located ahead and if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

Section 5. TODS Design and Composition. (1) Each TODS shall:

- (a) Be rectangular in shape;
- (b) Have a white legend and border on a blue background;
- (c) Have reflective legends, arrows, backgrounds and borders;
- (d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

- (a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;
- (b) The distance to the activity or business shown beneath the arrow;
- (c) Arrows pointing to the right at the extreme right of the TODS; and
- (d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same sign legends should be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel and when appropriate located so that the right turn signs are closer to the intersection. When not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation. [This document is incorporated by reference as a part of this administrative regulation.]

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

~~[(9) The document incorporated by reference in subsection (6) of this section as a part of this administrative regulation may be viewed or copied at the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The document may also be viewed or copied from the Office of the State Highway Engineer, Permits, 501 High Street, Mail code 11-2, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71-].~~

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

- (a) There is signing for a similar facility in either the right or left direction;
- (b) Through traffic is not the normal traffic pattern; or
- (c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. Trailblazer Signs. (1) At each turn required to be made by the traveling public when proceeding from a TODS to the tourist attraction, a legal sign shall be in place directing the turn. This may be accomplished by purchasing an additional TODS or TOD trailblazer.

er sign.

(2) The Transportation Cabinet, based on engineering judgment, shall establish the size and location of each TOD trailblazer sign.

(3) The Transportation Cabinet shall approve the proposed trailblazing route for each tourist activity seeking trailblazing signs prior to the submission of the application for permit is required by Section 16 [45] of this administrative regulation.

Section 8. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a tourist activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions with the department's contractor to remove or cover the tourist activity's TODS sign during the off season. The tourist activity shall in writing notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide motor vehicle [regular-unleaded] fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public;

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:

(a) Be in continuous operation to serve two (2) meals a day,

twelve (12) hours a day, six (6) days a week, anytime the TODS sign is displayed;

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in operation anytime the TODS sign is displayed;

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 9. Priority of Eligible Tourist Activities. At an intersection with insufficient space available to accommodate all of the applications for TODS:

(1) The first priority criterion to be considered shall be sign type with preference shown in the following order:

(a) "Tourist activities";

(b) "Camping";

(c) "Lodging";

(d) "Food"; and

(e) "Fuel".

(2) The first priority within a specific sign type shall be to an applicant located in a building or district which is on the state or national Register of Historic Sites.

(3) The second priority within a specific sign type shall be year-round facilities which shall have a higher priority than seasonal facilities.

(4) The third prioritization factor within a specific sign type shall be distance from the intersection with priority consideration being given to the applicant located closest to the intersection.

Section 10. Bumping. (1) Effective July 1, 2000, [if] a nonparticipating tourist activity with a higher priority established pursuant to Section 9 of this administrative regulation [becomes qualified nearer the intersection] than one (1) which already has a tourist activity sign displayed on a fully utilized information panel[-the new tourist activity] may apply to have its sign displayed at the beginning of the next contract year. The tourist activity with the lowest priority [farther from the intersection] shall have its TODS removed at the end of the contract year.

(2) Prior to July 1, 2000, if a nonparticipating tourist activity becomes qualified nearer the intersection than one (1) which already has a tourist activity sign displayed on a fully-utilized information

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panel, the new tourist activity may apply to have its sign displayed at the beginning of the next contract year. The tourist activity farther from the intersection shall have its TODS removed at the end of the contract year if the closer tourist activity has applied to have its sign displayed and has been approved for the program, except under the following circumstances:

- (a) [(1)] A tourist attraction shall not be replaced by a motorist service;
- (b) [(2)] A seasonal tourist attraction shall not be replaced by a year-round motorist service;
- (c) [(3)] A year-round tourist attraction shall not be replaced by a seasonal tourist attraction; and
- (d) [(4)] A year-round motorist service shall not be replaced by a seasonal motorist service.

Section 11. [10:] Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract may be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstallation fee shall be charged for the placement of a new TODS, if needed.

Section 12. [11:] Fees. (1)(a) Except as provided by in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of \$216, in advance, for each TODS placed on the right-of-way.

(b) Except as provided in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of \$216, in advance for each TOD trailblazer placed on the right-of-way.

(c) If the qualifying business has a "tourist attraction" logo as set forth in 603 KAR 4:035, the annual fee for each TOD trailblazing sign or TODS from the logo to the tourist activity shall be \$150.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS or TOD trailblazer sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of \$200 shall be charged for the removal or covering of all of the TODS or TOD trailblazer signs for the specific business.

(7) If the signs for a tourist activity are removed for any reason, a fee of \$200 shall be charged for the reinstallation of all of the TODS for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) The tourist activity shall be responsible for damages to its TODS or TOD trailblazer signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS or TOD trailblazer sign.

Section 13. [12:] Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky;

(6) Payment is not received on time or is otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing; or

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 14. [13:] Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

Section 15. [14:] TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 16. [15:] Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 17. [16:] Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

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(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing and subsequent procedures shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 18. [17:] Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) "Application for Highway Tourist Oriented Directional Signing (TODS)" form prepared by the Kentucky Logos [Sign-Group], Inc., February 1997 [May 1994] edition;

(b) "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc., May 1994 edition; and

(c) "Highway TODS Program Agreement" form prepared by the Kentucky Logos [Sign-Group], Inc., February 1997 [November 1995] edition; and

(d) The metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published by the U.S. Department of Transportation, 1997 edition.

(2) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Kentucky Logos [Sign-Group], Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286.

(3) The forms may also be viewed, copied, or obtained from the State Highway Engineer's Office, Permits, 501 High Street, Mail code 1-9 [11-2], Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

(4) The document incorporated by reference in subsection (1)(c) of this section may be viewed or copied at the Kentucky Logos, Inc., or at the Office of the State Highway Engineer, Permits Branch. The document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71.

J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary

E. JEFF MOSLEY, Office of General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 9, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: All travelers using Kentucky's noninterstate highways and nonparkway as well as the businesses which are eligible to and choose to purchase a TODS sign.

(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: Even though no comments were received at the public comment hearing, earlier comments made to the Transportation Cabinet indicate that the cost of living will not be affected anywhere in the state as a result of this administrative regulation. If there is an impact at all on employment, it will be to slightly increase employment in those areas where signage to tourist-oriented businesses may make the hard-to-locate ones more accessible.

(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: Even though no comments were received at the public comment hearing, the cost to a business choosing to participate in the TODS program will be just under \$250

per year/per signed intersection.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There are no changes in the compliance, reporting, or paperwork requirements as a result of the changes to this administrative regulation. There may be an effect upon competition since the "bumping" criteria was revised in the amendment to this administrative regulation. However, any time there are more applicants for TODS signs than there is space available for the signs, the entity not able to purchase the signs will have one less tool available with which to direct the traveling public to the business establishment.

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: 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:

The tourism industry has contended for some time that better highway signage for tourist-related businesses would increase the number of tourists who stop in Kentucky. The impact on state and local revenues while minuscule, would be positive.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The tourist-oriented businesses which choose to participate in the TODS program will pay annual fees which will be used to implement the administrative regulation. Enforcement of the administrative regulation will be by the Department of Highways using Road Fund receipts.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet decided that the administrative regulation needed to be amended after the Federal Highway Administration denied the request to allow TODS to be placed on fully controlled access highways other than interstates and parkways. Since TODS are forbidden on all fully controlled access highways, the Transportation Cabinet replaced the references to "interstate and parkway" with "fully-controlled access highway". The alternative of making no changes was discarded in the interest of clarity in the administrative regulation.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: 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: None

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

(10) Any additional information or comments: The Transportation Cabinet still has under consideration the request of Kentucky Logos, Inc. to lengthen the contract period for the first time applicants who enter the program after the contract year has begun.

(11) TIERING: Is tiering applied? Yes. Tiering was applied by allowing different TODS eligibility criteria between the extremely rural areas and the more populous areas.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. TODS signs are included in the Manual. However, the primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies approved by the Federal Highway Administration.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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

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

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Kentucky Department of Education (Amended After Hearing)

704 KAR 3:303. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] to establish courses of study for the different grades and kinds of common schools, with the [~~such~~] courses of study to comply with the expected outcomes for students and schools set forth in KRS 158.6451. KRS 156.070(1) gives the Kentucky Board of Education [~~state board~~] the management and control of the common schools and all programs operated in such schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education [~~state board~~]. [~~In fulfilling and perpetuating such duties and intent,~~] This administrative regulation incorporates by reference the program of studies, which contains [~~prescribes the document containing~~] the general courses for use in Kentucky's common schools.

Section 1. [~~Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160,~~] The "Program of Studies for Kentucky Schools, Grades Primary-12," April 1998 [~~February 1998~~] [~~as amended on March 10, 1993,~~] is hereby [~~promulgated and filed with the Legislative Research Commission and~~] incorporated [~~herein~~] by reference. This [~~Such~~] document may be inspected and copied at the Division of Curriculum and Assessment Development [~~Division of Curriculum Development~~], Department of Education, 18th [~~17th~~] Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m. [~~Monday through Friday,~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 10, 1998

FILED WITH LRC: April 10, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Carol Hanley, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving 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 comments received: None

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amended After Hearing)

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042

and 216B.105 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit. 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) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of the mentally ill who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

Section 2. Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1) General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this administrative regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this administrative regulation.

(2) A facility shall not be licensed as or be called a psychiatric hospital unless it provides the full range of services required by this administrative regulation and provides for the treatment of a variety of mental illnesses. Facilities which receive certificate of need approval and are licensed after the effective date of this administrative regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of mentally ill and mentally retarded.

(2) Professional staff. A facility requesting licensure as a psychiatric hospital exclusively which operates with an organized professional staff shall comply with the following requirements rather than those in

902 KAR 20:016, Section 3(8):

(a) The hospital shall have a professional staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of clinical care provided to patients and for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge; 2. State the necessary qualifications for professional staff membership;

3. Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. Provide a mechanism for appeal of decisions regarding staff membership and privileges;

5. Provide a method for the selection of officers of the professional staff;

6. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meetings of the professional staff; and

7. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee and quality assurance committee.

(c) The hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) The hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(b) The hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion consistent with KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(c) The hospital shall also have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and specifying the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. The hospital shall assure that patient rights are provided for pursuant to the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(5) Medical records.

(a) Patient information shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;

2. The specific information to be disclosed;

3. The purpose of disclosure; and

4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders or consent of patient, appropriate

family members or guardians for admission, evaluation, and treatment;

2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
3. Results of the psychiatric evaluation;
4. A complete social history;
5. An individualized comprehensive treatment plan;
6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;
7. A record of the patient's weight;
8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;
9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;
10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and
11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A physical examination of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health.

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, attitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated

diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's or advanced registered nurse practitioner's as authorized in KRS 314.011(8) and 314.042(8) written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient;

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient; and

~~[8. In no case shall a locking restraint be used.]~~

(d) Locking restraints may be used in the circumstances outlined in subparagraph 5 of this paragraph, if prior to the facility's use, the cabinet finds that the facility has instituted policies which comply with the provisions of paragraph (c) of this subsection and the following additional requirements:

1. The facility's direct care nursing staff shall have in their possession at least two (2) keys [a-key] to the locking restraint so that the restraint can be immediately removed in the case of an emergency and a plan setting forth designated nursing staff responsible

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for the keys [who should use the key] and how the keys are to be used;

2. Orders for the locking restraints shall be time-limited as follows:

a. Four (4) hours for adults up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [four (4) hour] intervals until the maximum time is reached;

b. Two (2) hours for children and adolescents ages nine (9) to seventeen (17) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [two (2) hour] intervals until the maximum time is reached;

c. One (1) hour for patients under the age of nine (9) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [one (1) hour] intervals until the maximum time is reached; and

d. Orders pursuant to this paragraph shall specify the restraint type and criteria for release in the patient's medical record.

3. If, after twenty-four (24) hours, a patient still needs restraints, the patient shall receive a face-to-face reassessment by a licensed physician for continuation of the use of the restraint. If the restraint is continued, the physician shall write a time-limited order according to the time frames set out in subsection (2) of this section;

4. A facility may reinstitute the use of a restraint that has been discontinued if the time frame limited order for the restraint has not expired; and

5. A facility found to be in compliance with this section may use locking restraints only under the following circumstances:

a. For the transport of forensic or other impulsively violent patients;

b. For the crisis situation stabilization of forensic and other impulsively violent patients;

c. To prevent a patient that has demonstrated the ability to remove themselves from a nonlocking restraint on one (1) or more occasions from harming themselves or others; or

d. For patients requiring ambulatory restraints as approved by a behavioral health management team.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. The attending physician shall assume full responsibility for diagnosis and care of his patient. Physician assistants and advanced registered nurse practitioners may provide services in accordance with their scope of practice and the hospital's protocols and bylaws.

2. A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

3. All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. When the patient's condition requires services not available in the hospital, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

4. There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly

defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation or treatment of his psychiatric problem, as needed;

b. The policy for referring patients needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy concerning notification of the patient's family of emergencies and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and medical services of the hospital in keeping with their size and scope of activity.

(e) The attending physician shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare the registered nurses and other nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that is appropriate to the needs and interests of the patients and is directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following additional requirements:

(a) Medications shall be administered by a registered nurse, a physician, or dentist, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) No medication shall be given without a written order signed by

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a physician, or dentist when applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14). Telephone orders for medications shall be given only to licensed practical or registered nurses or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner or therapeutically-certified optometrist within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

(6) Laboratory services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) The hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about patients development and current life situations to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to patients, patient groups or families;

2. Identification or development of community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop mechanisms for exchange of appropriate information with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 1, 1998

FILED WITH LRC: April 3, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 39 psychiatric hospitals 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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 15, 1998

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:300. Rules of professional conduct.

RELATES TO: KRS 325.240, 325.340

STATUTORY AUTHORITY: KRS 325.240

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 325.240, the Kentucky State Board of Accountancy may promulgate rules of professional conduct. This administrative regulation is necessary to establish the Kentucky State Board of Accountancy Rules of Professional Conduct that are patterned after the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants (AICPA). The function of this administrative regulation is to adopt appropriate rules of professional conduct to establish and maintain a high standard of integrity and dignity in the public accounting profession. The Kentucky State Board of Accountancy may review the AICPA's interpretations of its code of professional conduct for guidance when applying the provisions of this administrative regulation.

Section 1. Definitions. (1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Audit" means an examination of financial statements of an entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(3) "Board" is defined in KRS 325.220(1).

(4) "Client" means a person or entity which retains a licensee to provide public accounting services.

(5) "Commission" means any item of value given or received by a licensee to or from any third party in return for suggesting the purchase of any product or service.

(6) "Compilation" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements.

(7) "Contingent fee" means a fee established for the performance of any public accounting service pursuant to a written or oral agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service.

(8) "Financial statement" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources and obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles (GAAP) or a comprehensive basis of accounting other than generally accepted accounting principles (GAAP).

(a) General use financial statements, financial forecasts, projections and similar presentations are considered financial statements.

(b) Financial presentations included in tax returns are not financial statements.

(9) "Generally accepted accounting principles (GAAP)" means the conventions, rules, and procedures which describe accepted accounting practices at a particular time. They include broad guidelines of general applications and detailed practices and procedures that provide a standard by which to measure financial presentations.

(10) "Review" means performing inquiry and analytical procedures

that provide the licensee with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

Section 2. Independence. (1) A licensee or a firm shall not express an opinion on financial statements of an entity unless he and [or] the firm are [is] independent with respect to the entity.

(2) Prior to expressing an opinion on financial statements, the licensee shall assess his relationship with the entity to determine whether his opinion will be considered independent, objective and unbiased by a third party having knowledge of all facts referring to the relationship between the licensee and the entity.

(3) A licensee shall not be considered to be independent if during the period:

(a) Of the engagement or at the time of expressing his opinion, the licensee or his firm:

1. Had or was committed to acquire any direct or material indirect financial interest in the entity;

2. Was a trustee of any trust or executor or administrator of any estate if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the entity;

3. Had any joint, closely held business investment with the entity or any officer, director or principal stockholder which was material in relation to the licensee's or his firm's net worth;

4. Had any loan to or from the entity or to or from any officer, director or principal stockholder of the entity.

(b) Covered by the financial statements, the period of the professional engagement or at the time of expressing an opinion, the licensee or his firm served as a:

1. Promoter, underwriter, voting trustee, director, officer or in any capacity equivalent to that of a member of management or an employee of the entity; or

2. Trustee for a pension or profit sharing trust of the entity.

(4) The restriction found in subsection (3)(a)4 of this section shall not apply to the following loans obtained from a financial institution prior to January 1, 1992, which are current as to all terms of the loan, were made under normal lending procedures, terms and requirements, and have not been renegotiated:

(a) Loans obtained by a licensee or his firm which are not material in relation to the net worth of the borrower;

(b) Home mortgages; and

(c) Other secured loans, except loans guaranteed by a licensee's firm which are otherwise unsecured.

Section 3. Integrity and Objectivity. A licensee engaged in the practice of public accounting shall maintain objectivity, integrity, and be free of conflicts of interest. The licensee shall not subordinate his judgment to others.

Section 4. Competence. A licensee or a firm engaged in the practice of public accounting shall:

(1) Perform, or offer to perform, only those professional services that he or his firm may reasonably expect to complete with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

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Section 5. Standards of Practice. When performing an audit, review, compilation, or any other professional service within the practice of public accounting, the licensee and his firm shall comply with the following appropriate practice standards and all revisions promulgated after these dates [as follows]:

(1) Generally accepted auditing standards (GAAS) as reflected in the following documents:

(a) "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU, as of June 1, 1997 [1994];

(b) [~~"AICPA Professional Standards", Volume 1, Attestation Standards, Section AT, as of June 1, 1994;~~

(c)] Government Auditing Standards, "Yellow Book", General Accounting Office, 1994 revision;

(c) [(d)] "Interpretation of Continuing Education and Training Requirements", Government Auditing Standards, General Accounting Office, April, 1991; and

(2) Other applicable standards:

(a) "AICPA Professional Standards", Volume 1, Attestation Engagements, Section AT, as of June 1, 1997;

(b) "AICPA Professional Standards", Volume 2, Accounting and Review Services, Section AR, as of June 1, 1997 [1994];

(c) [(b)] "AICPA Professional Standards", Volume 2, Consulting Services, Section CS, as of June 1, 1997; [1994;-or]

(d) [(c)] "AICPA Professional Standards", Volume 2, Tax Practice, Section TX, as of June 1, 1997;

(e) "AICPA Professional Standards", Volume 2, Quality Control, Section QC, as of June 1, 1997; or

(f) "AICPA Professional Standards", Volume 2, Personal Financial Planning, Section PFP, as of June 1, 1997. [1994:]

(3) These standards are incorporated by reference and may be inspected at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.

Section 6. Accounting Principles. (1) A licensee who is aware that the financial statement or financial data of any entity contains a departure from GAAP that has a material effect on the financial statement or financial data taken as a whole shall not:

(a) Express an opinion or state affirmatively that the financial statement or financial data are presented in conformity with GAAP or another comprehensive basis of accounting; or

(b) State that he is unaware of any material modifications that should be made to the statements in order for them to be in conformity with GAAP.

(2) Notwithstanding subsection (1) of this section, financial statements may depart from GAAP, if the licensee:

(a) Demonstrates that due to unusual circumstances the financial statements or data would otherwise have been misleading;

(b) Describes the departure;

(c) States the approximate effects, if practicable; and

(d) Explains the reasons why compliance with GAAP would result in a misleading statement.

(3) GAAP is established by principles, practices, or guidance provided in statements, interpretations, bulletins, guides, and other documents identified in "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU 411, as of June 1, 1997 [1994].

(4) These standards are incorporated by reference and may be inspected at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.

Section 7. Confidential Client Information. A licensee shall comply with the requirements of KRS 325.440 relating to the disclosure of confidential client information.

Section 8. Client Records. (1) A licensee shall comply with the requirements of KRS 325.420 relating to the ownership of account-

ant's working papers - client records.

(2) The licensee shall not have a lien on these accounting or other records.

Section 9. Advertising and Other Forms of Solicitation. (1) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive.

(2) The use of coercion, overreaching or harassing conduct.

Section 10. Commissions. (1) A licensee shall not recommend or refer to a client any product or service in exchange for a commission, recommend any product or service to be supplied by his client to a third party, or receive a commission when the licensee or the licensee's firm also performs for that client:

(a) An audit or review of a financial statement;

(b) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or

(c) An examination of prospective financial information.

(2) The prohibition of subsection (1) of this section applies during the period in which the licensee is engaged to perform any of the services listed in subsection (1)(a), (b), and (c) of this section and the period covered by any historical financial statements involved in the listed services.

(3) A licensee who is not prohibited from receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

(4) A licensee who accepts a fee for recommending or referring any service of another licensee to any person or entity or who pays a fee to obtain a client shall disclose the receipt or payment of the fee to the client.

(5) This rule shall not prohibit:

(a) Payments for the purchase of an accounting practice; or

(b) Retirement payments to individuals, and their heirs or estates, who were formerly engaged in the practice of public accounting.

Section 11. Form of Practice and Name. (1) A licensee shall not practice under a firm name which includes any assumed business name.

(2) A licensee shall only practice in the form of a sole proprietorship, partnership, or professional service corporation, corporation, registered limited liability partnership, or a limited liability company registered with the board.

Section 12. Contingent Fees. (1) A licensee shall not accept or perform any public accounting services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:

(a) An audit;

(b) A review;

(c) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or

(d) An examination of prospective financial information.

(2) The prohibition of subsection (1) of this section applies during the period of time in which the licensee is engaged to perform those services and the period covered by any historical financial statements involved in those services.

(3) A licensee in public practice shall not prepare for a contingent fee:

(a) An original or amended tax return or claim for a tax refund. Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determin-

ADMINISTRATIVE REGISTER - 2408

ing the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund; or

(b) An amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed when there is no question as to the propriety of the deduction, rather the claim is filed to correct an omission.

(4) The following are examples of circumstances where a contingent fee would be permitted regardless of whether the licensee or licensee's firm is performing the services specified in subsection (1) of this section:

(a) Representing a client in an examination by a revenue agent of the client's federal or state income tax return;

(b) Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case by a different taxpayer or with respect to which the taxing authority is developing a position;

(c) Filing an amended federal or state income tax return or refund claim which claims a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Taxation (\$1,000,000 at March, 1991) or state taxing authority;

(d) Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests;

(e) Requesting, by means of protest or similar document, consideration by the state or local taxing authority of a reduction in the assessed value of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value; or

(f) Representing a client to obtain a private letter ruling or influencing the drafting of an administrative regulation or statute.

(5) Fees shall not be considered as contingent:

(a) If fixed by courts or other public authorities; or

(b) In tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered determined based on the findings of governmental agencies, if the licensee can demonstrate a reasonable expectation at the time of the fee arrangement, of substantive consideration by an agency with respect to the licensee's client. The expectation is deemed not reasonable in the case of preparation of original tax returns.

(6) Fees may vary depending on the complexity of services rendered.

DAVID L. ANNEKEN, CPA, President

RICHARD C. CARROLL, Assistant Attorney General

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 9 a.m. at the administrative offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 1998, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan G. Stopher, Executive Director,

Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact Susan G. Stopher

(1) Type and number of entities affected: 1,293 CPA firms.

(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: No increased costs.

2. Second and subsequent years: No increased costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No impact since these are standards of practice and effective date will be communicated in regular quarterly newsletters.

2. Continuing costs or savings: No impact either negatively or positively.

3. Additional factors increasing or decreasing costs: No impact either negatively or positively.

(b) Reporting and paperwork requirements: This does not apply, since no costs exist.

(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: Trust and Agency Funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only manner in which to reference nationally recognized professional standards.

(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: There is no overlapping or conflicting statute/regulation.

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

(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: No

(11) TIERING: Is tiering applied? Only one class of certified public accounting firms exists and all firms are required to comply with these standards.

ADMINISTRATIVE REGISTER - 2409

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (Amendment)

201 KAR 8:400. Complaint procedure.

RELATES TO: KRS 313.022 [313.150]

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(4)

authorizes the board to regulate the practice of dentistry and the use of dental auxiliary personnel. KRS 313.022 authorizes the board to institute and maintain actions to restrain and enjoin the unlicensed practice of dentistry. This administrative regulation is necessary to establish the procedure for filing a complaint for the unlicensed practice of dentistry and the action to be taken by the board on a complaint. [This administrative regulation establishes procedures for filing complaints against persons subject to administrative regulation by the Kentucky Board of Dentistry.]

Section 1. Definitions. (1) "Board" is defined in KRS 313.010(1) and 313.220.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee, certificate holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Law enforcement committee" means a committee that:

(a) Reviews an initiating complaint;

(b) Determines whether an investigation should be conducted;

(c) Appoints one (1) of its members to conduct the investigation; and

(d) May be assisted by:

1. The board's staff;

2. A board agent; or

3. The office of the Attorney General.

(4) "Initiating complaint" means any allegation of:

(a) A violation by a:

1. Licensee;

2. Certificate holder; or

3. Applicant; or

(b) An unlicensed person:

1. Engaging in the practice of dentistry; or

2. Using the title of dentist, dental hygienist, or specialist.

(5) "Order" means the final disposition of a hearing.

(6) "Person" means a(n):

(a) Individual;

(b) Partnership;

(c) Corporation;

(d) Association;

(e) Public organization; or

(f) Private organization.

(7) "Presiding officer" means:

(a) The person appointed by the board to preside at a hearing, pursuant to KRS 313.150(1) and (2); and

(b) A hearing officer or member of the hearing panel.

(8) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

(a) The board;

(b) A member of the public; or

(c) A state agency.

(2) An initiating complaint shall:

(a) Be in writing unless the nature of the complaint alleges an immediate danger to the health, safety, and welfare of the public;

(b) Bear the date of the complaint; and

(c) Bear the signature of the person making the complaint.

(3) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint.

(4) An initiating complaint may be received by:

(a) A board member;

(b) The Office of the Attorney General; or

(c) A staff member.

Section 3. Consideration of Initiating Complaint. (1) Review of an initiating complaint shall take place:

(a) At the next regularly scheduled meeting of the law enforcement committee; or

(b) As soon as practicable.

(2) The law enforcement committee shall:

(a) Review the initiating complaint;

(b) Determine if an investigation is warranted; and

(c) If it is determined that an investigation is warranted, appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.

(3) Based on consideration of the initiating complaint and the investigative report, the board shall determine if there has been a prima facie violation. The members of the law enforcement committee shall not vote on this determination.

(4) If it is determined that the facts alleged constitute a prima facie violation, the board:

(a) Shall issue a formal complaint, in accordance with KRS Chapter 13B, against the:

1. Licensee;

2. Certificate holder; or

3. Applicant; and

(b) May order that a written response be filed with the board, or if it is determined that there is a prima facie violation of KRS 313.020, shall proceed under KRS 313.022.

Section 4. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B, unless otherwise noted in this administrative regulation.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at said deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition. No other depositions shall be allowed.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a list of witnesses expected to testify in the hearing, including mailing address, telephone number, and a summary of expected testimony.

Section 5. Final Disposition. (1) Upon reaching a decision, the board shall notify the complainant and respondent of its final disposition of the matter.

(2) The board shall make public:

(a) Its final order in a disciplinary action under KRS 313.130, 313.140, and 313.330; and

(b) An action to restrain or enjoin the unlicensed practice of dentistry.

[Section 1. Unless exceptional circumstances otherwise require, all complaints shall be in writing and shall bear the date and signature of the person making the complaint.]

Section 2. Unless exceptional circumstances otherwise require, before a complaint is investigated it shall present evidence of a specific violation of law.

Section 3. Complaints may be received by any board member;

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dentist or hygienist designated by the board, the board's counsel, or by any board staff member.

~~Section 4. If the complaint warrants a formal hearing, the board shall provide the respondent with:~~

- ~~(1) A formal written presentation of charges;~~
- ~~(2) A notice of the right to be represented by counsel;~~
- ~~(3) At least ten (10) days to prepare any defense;~~
- ~~(4) The right to answer charges;~~
- ~~(5) The right to subpoena witnesses in his or her behalf; and~~
- ~~(6) The notice of the right to appeal after an adjudication against the respondent.~~

~~Section 5. Any board member who has participated in the preliminary investigations shall not participate in the hearing process.~~

~~Section 6. All subpoenas shall be issued in the name of the board and shall be signed by the secretary-treasurer of the board. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees, and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.~~

~~Section 7. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the matter.]~~

PATRICIA G. HOWELL, RDH, President

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 9, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 22, 1998, at 3 p.m., local time, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 1998, five (5) 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 wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573, Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 135 persons, including dentists, hygienists, and persons allegedly practicing dentistry or dental hygiene without license as otherwise required by KRS Chapter 313.

(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: This will clearly define and appropriately streamline the procedures used to handle all complaints received by the agency and will further provide clearly defined steps for the agency to take in handling the complaints.

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: Would allow the agency to notify the public via a press release or other method.

(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 funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These procedures will allow the agency to handle complaints in a defined manner so as to fulfill its mandate to regulate the practice of dentistry and dental hygiene in Kentucky for the protection of the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Public health may be harmed by preventing the agency from fulfilling its mandate to regulate the practice of dentistry and dental hygiene in Kentucky.

(c) If detrimental effect would result, explain detrimental effect: Agency procedures would remain unclear and vague.

(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: This amended regulation will provide due process to licensees, certificate holders, and applicants, and will protect the public by allowing the agency to handle efficiently and competently the complaints it receives from the public and other agencies.

(11) TIERING: Is tiering applied? No. The regulation applies to the processing of all complaints to the agency.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1)(a), 324.046, 324.111, 324.160(1)(j), (r), 324.410, 324.420

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324. Promulgation of the definitions of "false, misleading, and deceptive" are mandated by the legislature in KRS 324.117. The proposed amendment regarding "solicitation" is proposed to protect the consumer public from unlicensed practice.

ADMINISTRATIVE REGISTER - 2411

Section 1. Definitions. (1) "Academic credit hour" means:

- (a) One (1) college semester hour; or
- (b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.

(2) "Broker" is defined in KRS 324.010(1)(a) and shall not include an individual who:

- (a) Is an office or clerical employee of a broker; and
- (b) Is limited to the duties normally assigned to an office or clerical employee, which means that the employee shall not:
 - 1. Solicit or accept a listing or offer;
 - 2. Show property;
 - 3. Negotiate a real estate transaction;
 - 4. Disclose information that is:
 - a. Available to the broker; and
 - b. Not available to the public; or
 - 5. Hold himself out to the public as engaged in the business of brokering real estate.

(c) "Solicit" means the contacting of consumers regarding a consumer's willingness to buy, sell, or lease real estate other than an inquiry by an employee of the principal broker of a company as to whether the consumer is interested in buying, selling, or leasing property.

(3) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:

- (a) The offer or counteroffer is accepted; and
- (b) An executory contract exists.

(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:

- (a) Is:
 - 1. Known to be false; or
 - 2. Made recklessly;
- (b) Is made to induce an act;
- (c) Induces an act in reliance on the misrepresentation; and
- (d) Causes injury.

(5) "Prize" means an item of value that is:

- (a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and
- (b) Not a complimentary:

1. Refreshment, including a soft drink or snack, that is offered to the general public; or

2. Gift that:

- a. Has a value less than fifty (50) dollars;
- b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and
- c. Was not offered prior to closing.

(6) "Regular employee" means an employee who:

- (a) Is compensated at a rate that is fixed in advance in writing;
- (b) Does not receive a commission;
- (c) Works exclusively for the owner; and
- (d) Has his total compensation subject to withholding and FICA taxes.

(7) "Without unreasonable delay" means within two (2) working days of the creation of an executory contract for the sale of real property.

(8) As used in KRS 324.117(1), "false" means contrary to fact.

(9) As used in KRS 324.117(1), "misleading" means leading one to a mistaken belief or conclusion.

(10) As used in KRS 324.117(1), "deceptive" means knowingly making a representation that is contrary to fact.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky

Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Amendment at Section 1(2)(c) effects all real estate licensees and parties who attempt to engage in unlicensed brokerage in Kentucky. Amendments at Section 1(8), (9), and (10) are mandated by the General Assembly by virtue of KRS 324.117.

(2) Direct and in direct 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 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 effect on cost of doing business.

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact expected.

(b) Kentucky: Same as 6(a).

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare in Kentucky.

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

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environmental and public health would result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: No 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: Not applicable.

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

(10) Any additional information or comments: No further comment.

(11) TIERING: Tiering is not necessary because all commission disciplinary hearings will utilize the definition of fraudulent, dishonest, and misleading in regards to advertising. The definition will affect all entities engaging in telemarketing and all licensees utilizing unlicensed personnel. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

201 KAR 11:147. Procedure for license retention when salesman released by broker.

RELATES TO: KRS 324.310, 324.330

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: The function of this administrative regulation is to expand KRS 324.310 and 324.330 to avoid misinterpretations of administrative procedures.

Section 1. Upon receipt, by regular mail, of a letter from the responsible broker releasing a salesperson, the commission shall notify the salesperson by regular mail at his last resident address on file at the commission office that, within thirty (30) days of the date of the release letter he shall reaffiliate with another broker or request by letter that his license be placed in escrow. Failure to comply will result in cancellation of license ~~[and retaking the regular examination in order to become reinstated]~~.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201,

Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Effects all real estate licensees in Kentucky.

(2) Direct and in direct 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 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 effect on cost of doing business.

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact expected.

(b) Kentucky: Same as 6(a).

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare in Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect: No 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: Not applicable.

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

(10) Any additional information or comments: No further comment.

(11) TIERING: Tiering is not necessary because all licensees will adhere to the same requirements. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

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GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

201 KAR 11:170. Private school approval.

RELATES TO: KRS 324.010(1)(f), (g)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: To set policies and procedures for private school approval.

Section 1. To obtain a certificate of approval, a real estate school shall apply to the commission on forms provided by the commission and supply all information requested concerning curriculum, instructors, and other educational materials and policies. The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

Section 2. The curriculum for an approval real estate school shall:

- (1) Include a minimum of three (3) academic hours per course;
- (2) Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and
- (3) Consist of a course containing at least topics and materials prescribed by the Real Estate Commission.

Section 3. An approved real estate school shall not:

- (1) Advertise in conjunction with the business of a broker or a brokerage firm; or
- (2) Discuss, induce, or promote affiliation with any broker or brokerage firm.

Section 4. (1) An approved real estate school shall maintain accurate and permanent records on all students enrolled in courses. Permanent records shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(2) Temporary records shall be maintained for three (3) years. These records shall include student attendance records and test scores.

(3) The sample "official transcript" specified in KRS 324.046(3) shall be submitted with the approved school application.

(4) An approved real estate school shall notify ~~provide to~~ the commission within five (5) days of the beginning of any prelicense course. ~~current course schedules and instructor resumes at least seven (7) days after the course begins.~~

Section 5. An approved real estate school shall permit inspections and monitoring by the commission or its designee to evaluate any aspect of the administration or operation of the school.

Section 6. An approved school shall notify the commission within ten (10) days of any material change from the information originally furnished on the application form or attachments thereto. An approved school shall renew its certification with the Real Estate Commission annually on forms provided by the commission. The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m. The annual renewal date shall be November 1. It shall be the school's responsibility to renew on or before the annual renewal date.

Section 7. Private school approval may be withdrawn if the commission determines that:

- (1) Information contained on the application or renewal is

inaccurate or misleading.

(2) The establishment or conduct of the school is not in compliance with these administrative regulations or the instruction is so deficient as to impair the value of the course. Where a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days.

Section 8. An effort made directly or indirectly by a school, official or employee, or anyone on their behalf to reconstruct the real estate licensing examination or portion thereof shall result in immediate revocation of school approval.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Effects all approved real estate schools.

(2) Direct and in direct 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 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 effect on cost of doing business.

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

1. First year following implementation: The proposed amendment does not increase paperwork, reporting, or compliance workloads. The amendment will change the timing requirements only.

2. Second and subsequent years: Same as 2(c)(1).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork or reporting requirements.

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

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed.

(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 impact expected.

(b) Kentucky: Same as 6(a).

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(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: None

(11) TIERING: Tiering is not necessary as the proposed change applies to all continuing education providers. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:175. Instructor approval procedures and guidelines.

RELATES TO: KRS 324.010(1)(f)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: To inform and set certain standards for the licensees and to protect the public.

Section 1. In order to be approved by the commission, an instructor shall submit an application on forms available from the commission and shall have:

(1) A bachelors, masters or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field reasonably related to real estate;

(2) An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization[~~in real estate~~];

(3) Completed five (5) consecutive years full-time experience in the real estate related subject area that he is teaching (averaging at least twenty (20) hours per week for each of the five (5) years); or

(4) ~~A valid current teachers certificate authorizing the holder to teach in the field of real estate;~~

(5) Any combination of teaching in secondary education and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience);

~~(6) The forms required in this section are incorporated by~~

~~reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.]~~

(5) Candidates for instructor approval must possess a thorough familiarity of the provisions of the Kentucky Real Estate License Law and how those laws affect the subject area the instructor will be teaching. Each instructor must also possess a thorough knowledge of the subject area which he shall be teaching.

Section 2. Approval of an instructor may be withdrawn by the commission for:

(1) A violation of any provision of KRS Chapter 324 or an administrative regulation promulgated under it;

(2) Falsification of material submitted to the commission to become an approved instructor;

(3) Failure to provide to the commission requested material;

(4) While acting as an instructor in an educational facility, engaging in brokerage activity with any of the enrolled students;

(5) Soliciting investments from a student;

(6) Attempting to recruit any student to a real estate company while acting as an instructor.

Section 3. Only an approved instructor shall teach:

(1) Prelicense courses offered by an:

(a) Approved real estate school; or

(b) Accredited real estate school which receives any funding under the real estate education, research and recovery fund; and

(2) Mandatory continuing education courses.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Effects only persons that serve as instructors in real estate education courses (approximately 175 instructors annually).

(2) Direct and in direct 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 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

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from the public comments received: No effect on cost of doing business.

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

1. First year following implementation: No effect as instructors are already required to submit proof of qualifications to the commission.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Instructors are already required to submit written proof of qualifications to the commission. This allows the commission to ensure licensees receive proper instruction and thus consumers are protected. The proposed deletion of the required submission of a valid teacher's certificate will reduce paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact expected.

(b) Kentucky: Same as 6(a).

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare in Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect: No 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: 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: Regulation amendments serve both consumers and licensees. Licensees will receive better quality instruction by virtue of the changes. This instruction will serve the consumer public by providing better educated licensees.

(11) TIERING: Tiering is not necessary as the changes affect all instructors in Kentucky. The commission approves approximately 175 instructors annually. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS 324.410(3)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: To inform and set certain standards for the licensees and to protect the public.

Section 1. (1) Beginning with the calendar year January 1, 1992, actively licensed agents shall be required to attend annually six (6) hours of continuing education courses sponsored or approved by the commission. Of this six (6) hours, two (2) hours shall be in courses on real estate law. Each active licensee shall be required to attend one (1) commission approved core course once every four (4) years in accordance with a commission established schedule which shall satisfy the licensee's mandatory continuing education requirement for the year in which the core course is taken.

(2) In order for an education course to be approved by the commission, the sponsor of the course shall provide to the commission annually and for renewal of approval, on or before November 1 of the year before the course will be offered:

(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and

(b) The work experience, credentials and educational background of the instructors of the course.

(3) To receive approval, an education course shall consist of topics that will:

(a) Enable a student to better understand the brokerage business;

(b) serve the public.

(4) Courses that are self-motivational in nature shall not be approved.

(5) A course instructor shall be reasonably competent by educational background or work experience and have adequate knowledge of the course material. He shall be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.

(6) An education course shall be sponsored by an accredited real estate school, or by a school that has been given a certificate of approval by the Kentucky Board of Proprietary Education, other appropriate governmental regulatory body, [or] by an approved real estate school, or a commission-approved nonprofit real estate related organization.

(7) A sponsor shall:

(a) Provide:

1. Attendance records to the commission;

2. Course evaluation forms to students for submission to the commission;

(b) Permit monitoring and inspection by the commission;

(c) Sign a written agreement relating to compliance with commission requirements, on a form prescribed by the commission; and

(d) Make the course available to all licensed agents, subject to space limitations.

(8) The forms required in subsection (5) of this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(9) An education course shall consist of a minimum of two (2) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(10) An escrowed licensee shall not be required to attend continuing education courses. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the completion of the current calendar year's

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continuing education requirements. Beginning January 1, 1999, if the licensee has not completed a commission approved core course in the previous four (4) years, then the core course shall become the current calendar year's continuing education requirement for a license changing from escrow to active.

(11) A sales associate licensee shall not be required to attend continuing education courses during the first calendar year in which he is first licensed in Kentucky.

(12) Beginning April 1, 1993, an active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(13)(a) A licensee shall complete the mandatory continuing education requirements of this administrative regulation by December 31 of each calendar year.

(b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.

(c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 15 [94] of the following calendar year.

(d) A license shall not be cancelled if a licensee:

1. Places his license in escrow; or
2. Completes the requirements of a delinquency plan that complies with subsection (14) of this administrative regulation.

(e) Any licensee who fails to either place their license in escrow or file the delinquency plan on or before February 15 shall have his license cancelled as of that date.

(14)(a) On or before February 15 of the following calendar year, a licensee shall submit a written delinquency plan to complete the continuing education requirements for the previous calendar year.

~~(b) [The delinquency plan shall include a list of approved or sponsored education courses that the licensee agrees to attend.]~~

(e) The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15.

~~(c) [(d)]~~ The licensee shall submit a fee of \$200 with his delinquency plan.

(d) [(e)] If a licensee fails to complete an approved delinquency plan, his license shall be suspended for two (2) years. At the conclusion of the two (2) year period, the licensee must, within ninety (90) days of the expiration of the suspension, complete the current year's continuing education requirements, submit required documentation to reinstate the license and pay all necessary renewal and transfer fees. After the ninety (90) day period, the license will be cancelled. The licensee will be required to meet the current prelicense requirements and retake the examination.

~~(e) [(f)]~~ A licensee who places his license in escrow under the provisions of subsection (13)(d) of this section shall not be permitted to reactivate his license unless he has:

1. Completed the current year's mandatory continuing education requirements; and
2. Paid the fee provided for by paragraph (d) of this subsection.

(15) The time requirements provided in this administrative regulation may be extended by the commission if:

(a) A true hardship or other good cause clearly warrants relief; and

(b) The request for extension is requested in writing on or before January 30 [45] of the following calendar year.

(16) A licensee who teaches an approved continuing [mandatory] education course shall be entitled to one (1) hour of credit for each hour of instruction he teaches plus two (2) hours credit for preparation for each course he teaches. The instructor's supervisor must submit a written request for credit to be awarded for teaching a class. The request must contain the instructor's name, date and name of course, and the number of hours. The instructor may only receive credit once in each calendar year for teaching any given course.

(17) Hours of instruction in prelicense real estate education courses shall be credited to the mandatory continuing education requirements. It shall be the licensee's responsibility to submit a transcript or course completion certificate for the prelicense course in order to receive credit toward their continuing education requirements for that calendar year. An instructor of an approved prelicense real estate course may receive credit toward his continuing education requirements. Reporting shall follow the provisions as outlined in Section 16 of this administrative regulation.

(18) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.

~~(19) [Education courses offered by the commission shall be available at no charge to a licensee.]~~

~~(20)]~~ The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: The proposed amendment at Section 1, will affect all active real estate licensees in Kentucky not exempted from continuing education requirements. The proposed change at Section 1(6) will affect nonprofit organizations which provide real estate education. The change at Section 1(11) will affect new licensees only. The change at Section 1(13)(c) will affect a minimal number of licensees who fail to submit proof of completion or complete continuing education requirements on a timely basis. The change at Section 1(13)(e) will affect a minimal number of licensees who fail to complete continuing education delinquency plans. The deletion of Section 1(14)(b) will affect a limited number of licensees who fail to meet continuing education requirements. The change at Section 1(14)(d) will affect a minimal number of licensees whose license is suspended. The change at Section 1(14)(e)(1) is merely a clarification and does not alter any duties or requirements. It does apply to licensees removing a license from escrow. The change at Section 1(16) applies to continuing education instructors only. The change at Section 1(17) applies only to licensees who are also prelicense instructors. The deletion of Section 1(19) will not affect any licensee.

(2) Direct and in direct 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 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 effect on cost of doing business except the change at Section 1(14)(d) will require a minimal number of licensees who are suspended as a result of failing to complete continuing education requirements.

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

1. First year following implementation: The proposed change to Section 1(1) will require all licensees not exempted from continuing education requirements to attend a core law course once every four years. The practical effect may likely be insignificant as licensees must now attend 6 hours of continuing education each year. The Real Estate Commission anticipates licensees will utilize the core law course once every four years to fulfill that years continuing education requirements. There will be no effect on the cost of doing business except the change at Section 1(14)(d) which will require a minimal number of licensees who are suspended as a result of failing to complete continuing education requirements. The proposed change at Section 1(16) and (17) will require a minimal (one page) reporting requirement. However, the commission already requires documentation from instructors regarding this activity although the requirement is not codified.

2. Second and subsequent years: See (2)(c)(2).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No significant cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No significant change on reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement these amendments.

(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 impact expected.

(b) Kentucky: No impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendment at Section 1(1) is the only feasible way to accomplish the goal desired. Other states have utilized the core law course with success. The change at Section 1(14)(d) provides the most fair method for reinstating suspended licenses. The changes at Section 1(16) and (17) are the most practical methods to document the required information.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on public health or environmental welfare.

(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: The proposed changes are primarily clarifications of unclear areas. The change at Section 1(1) will benefit licensees by increasing knowledge of law. The change will also benefit consumers by increasing licensees awareness of how law affects real estate transactions.

(11) TIERING: Tiering is not necessary because the changes proposed do not effect any class differently than another. Some changes only address situations that occur infrequently (e.g., the changes regarding suspension of licenses for failing to meet continuing education requirements). However, all licensees are effected equally if their actions necessitate. The changes do not apply to licensees exempted from continuing education requirements by virtue of KRS 324.046(5). However, this distinction was made by the Kentucky General Assembly and the Real Estate Commission may not supersede or usurp the legislature's judgment. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and non-size variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:350. Seller's disclosure of conditions form.

RELATES TO: KRS Chapter 324

STATUTORY AUTHORITY: KRS 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.360 requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and sets forth matters which the form shall contain and allows the inclusion of additional matters. The following form shall be completed and signed as provided in KRS 324.360, by sellers of residential real estate when licensed agents are involved.

Section 1. The form shall be as follows:

***SELLER DISCLOSURE OF PROPERTY CONDITION**

The information in this form is only for the period the undersigned owned the property beginning (date of purchase) to (date of this form).

This form applies to sales and purchases of residential real estate.

This form is not required for:

1. Residential purchases of new homes if a written warranty is offered;

2. Sales of real estate at auction; [or]

3. A court supervised foreclosure.

PROPERTY ADDRESS:

PURPOSE OF STATEMENT: Completion of this form shall satisfy the requirements of Chapter 324 of the Kentucky Revised Statutes which mandates the seller's disclosure of, ~~[the condition of]~~ and information about the property he is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement shall not be a warranty of any kind by the seller or seller's agent and shall not be intended as a substitute for any inspection or warranty the purchaser may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach

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additional pages with your signature if necessary. (4) Complete this form yourself. (5) If some items do not apply to your property, write "not applicable". (6) If you do not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property. [and that] This information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to any person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following [are representations made by seller and] are not the representations of the agent. [The agent has no independent knowledge of the condition of the property except that which is set out on this form.]

Please answer all questions. If the answer is yes, please explain. If additional space is needed, use the reverse side or make attachments.

1. HOUSE SYSTEMS

	YES	NO	UNKNOWN
Any past or current problems affecting:			
(a) Plumbing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Electrical system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Appliances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Floors and wall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) Doors and windows	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) Ceiling and attic fans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) Security system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) Sump pump	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) Chimneys, fireplaces, inserts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(j) Pool, hot tubs, sauna	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(k) Sprinkler system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(l) Heating: age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(m) Cooling/air conditioning: age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explain:

2. FOUNDATION/STRUCTURE/BASEMENT

(a) Any defects or problems, current or past, to the foundation or slab?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Any defects or problems, current or past, to the structure or exterior veneer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explain:			
(c) Has the basement leaked at any time since you have owned or lived in the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When was the last time the basement leaked?			
(e) Have you ever had any repairs done to basement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) If you have had repairs done to the basement relative to leaking, when was the repair performed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explain:

(g) If the basement presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.)

3. ROOF

(a) Age of the roof?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Has the roof leaked at any time since you have			

owned or lived in property? ☐ ☐ ☐

*When was the last time the roof leaked?

(c) Have you ever had any repairs done to the roof? ☐ ☐ ☐

*If you have ever had the roof repaired, when was the repair performed?

Have you ever had the roof replaced? ☐ ☐ ☐

*If you have had the roof replaced, when was the replacement performed?

If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.)

4. LAND/DRAINAGE

(a) Any soil stability problems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Has the property ever had a drainage, flooding, or grading problem?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Is the property in a flood plain zone?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining this property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explain:

5. BOUNDARIES

(a) Have you ever had a staked or pinned survey of the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Do you know the boundaries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Are the boundaries marked in any way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Are there any encroachments or unrecorded easements relating to the property of which you are aware?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explain:

6. WATER

(a) Source of water supply			
*Are you aware of below normal water supply or water pressure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Is there a water purification system or softener remaining with the house?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Has your water ever been tested? If yes, give results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explain:

7. SEWER SYSTEM

(a) Property is serviced by: ☐ public sewer; ☐ private sewer; ☐ septic tank; ☐ storm sewer; ☐ leach field; ☐ aeration tank; ☐ filtration bed;

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☐ unknown

(b) If not a public or private sewer:

Date of last inspection:

Date last cleaned:

(c) Are you aware of any problems with the sewer system? ☐ ☐ ☐

Explain:

8. CONSTRUCTION/REMODELING

(a) Have there been any additions, structural modifications, or other alterations made? ☐ ☐ ☐

(b) Were all necessary permits and government approvals obtained? ☐ ☐ ☐

Explain:

9. HOMEOWNER'S ASSOCIATION

(a) Is the property subject to rules or regulations of any homeowner's association? ☐ ☐ ☐

If yes, what is the yearly assessment? \$

(b) Are you aware of any condition which may result in an increase in taxes or assessments? ☐ ☐ ☐

(c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.? ☐ ☐ ☐

Explain:

10. MISCELLANEOUS

(a) Was this house built before 1978? ☐ ☐ ☐

(b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead-based paint in or on this home? ☐ ☐ ☐

(c) Are you aware of any testing for radon gas? ☐ ☐ ☐

*Results, if tested:

(d) Are you aware of any underground storage tanks, old septic tanks, field lines, or abandoned wells on the property? ☐ ☐ ☐

(e) Are you aware of any present or past wood infestation (i.e., termites, bores, carpenter ants, fungi, etc.)? ☐ ☐ ☐

(f) Are you aware of any damage due to wood infestation? ☐ ☐ ☐

(g) Have the house and/or other improvements ever been treated for wood infestation? ☐ ☐ ☐

*If yes, when, by whom, and any warranties?

(h) Are you aware of any existing or threatened legal action affecting this property? ☐ ☐ ☐

(i) Are there any assessments other than property assessments that apply to this property (i.e., sewer assessments)? ☐ ☐ ☐

(j) Are you aware of any violations of local, state, or federal laws, codes, or ordinances relating to this property? ☐ ☐ ☐

(k) Are you aware of any other conditions which are defective with regard to this property? ☐ ☐ ☐

(l) Are there any environmental hazards known to seller? ☐ ☐ ☐

(m) Are there any warranties to be passed on? ☐ ☐ ☐

SPACE FOR ADDITIONAL INFORMATION:

(PROPERTY CONDITIONS, IMPROVEMENTS AND ADDITIONAL INFORMATION:

1. Does the basement leak? ☐ Yes ☐ No ☐ Unknown
If yes, when? ☐ If yes, has the leak been repaired or treated? ☐ Yes ☐ No ☐ Unknown
2. Does the roof leak? ☐ Yes ☐ No ☐ Unknown
If yes, when? ☐ If yes, has the leak been repaired? ☐ Yes ☐ No ☐ Unknown
What is the condition of the roof? Explain:
3. What is the source of the water supply?
Has the water been tested? ☐ Yes ☐ No ☐ Unknown
If yes, will you provide a copy of the test results? ☐ Yes ☐ No
4. Have you ever found the water supply to be inadequate? ☐ Yes ☐ No If yes, explain:
5. What is the source of the property's sewage service?
☐ Municipal or other sewers system ☐ Septic tank/septic system ☐ Other
6. What is the condition of your sewer? Explain:
7. Has your sewage system been repaired or treated? ☐ Yes ☐ No If yes, approximate date of repair:
8. Plumbing system: Are you aware of any leaks in your plumbing system? ☐ Yes ☐ No ☐ Unknown If yes, describe the location and problem:
9. Electrical System: Is the electrical system more than twenty years old? ☐ Yes ☐ No ☐ Unknown
10. Have you found it necessary to have any portion of your electrical system repaired by an electrician or other professional? ☐ Yes ☐ No ☐ Unknown
11. Heating System: Type/approximate age
12. Cooling System: Type/approximate age
13. Have you had your heating or cooling system repaired or had maintenance work performed on your heating or cooling system? ☐ Yes ☐ No ☐ Unknown If yes, the approximate date of the repair or maintenance:

The seller has owned this [the] property since (date) and makes these representations only since that date. Seller agrees to immediately notify buyer of any changes which may become known to seller prior to closing. (and only prior to the date this form is completed. If any changes occur in the structure or mechanical or

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component system of this property from the date of this form to the date of closing, seller will immediately disclose the changed circumstances to the buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or the broker's agent.]

Seller _____ Date _____ Seller _____ Date _____

[Buyer _____ Date _____ Buyer _____ Date _____]

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES [HIS UNDERSTANDING] THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller:
Date:

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent:
Date:

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer _____ Date _____ Buyer _____ Date _____

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER."

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Facsimile (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Effects all real estate licensees in Kentucky and consumers engaged in residential real estate transactions.

(2) Direct and in direct 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 effect.

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

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: KRS 324.360 and the current version of 201 KAR 11:350 require a seller's disclosure of property condition form. The amendment of 201 KAR 11:350 will not increase the amount of paperwork required of real estate licensees. The amendment will not alter the requirement that copies of the form be retained by licensees.

(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: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: Same as 6(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is an improvement on the current form required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

(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: No detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This form is required by KRS 324.360. No conflict, overlapping or duplication exists.

(a) Necessity of proposed regulation if in conflict: Not conflict exists.

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

(10) Any additional information or comments: This amendment will serve consumers and licensees by providing a form which is clear and unambiguous. The form also promotes written disclosure and documentation during real estate transactions. The public interest is served by this amendment.

(11) TIERING: Tiering is not applicable as the form is required for all residential transactions in Kentucky in which a real estate licensee is compensated. The only exceptions to this statutory rule are those provided by statute. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not affect small business concerns mentioned in KRS 13A.210(5).

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(6), 314.042, 314.161

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 314 provides for the registration of advanced registered nurse practitioner. It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.

Section 1. The application for registration as an advanced registered nurse practitioner in Kentucky (June 1993) required by the board is hereby incorporated by reference. A copy of the form may be obtained, inspected or copied at the Board of Nursing office, 312 Whittington Parkway, Suite 300430, Louisville, Kentucky during regular business hours.

Section 2. Postbasic Program of Study and Clinical Experience. An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board:

- (1) Be an established, ongoing and organized program offered on a routine basis to enrollees.
- (2) Be accredited or approved for the education of nurses by a recognized accreditation or approval body, or the sponsoring organization holds such accreditation or approval.
- (3) Have a program design which prepares enrollees to function in a role consistent with the advanced registered nursing practice specialty designation.
- (4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students.
- (5) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students.
- (6) Include didactic components.
- (7) Include a supervised clinical experience.
- (8) Upon successful completion award a diploma or certificate.
- (9) Extend over an enrollment period of not less than nine (9) months. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing students for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

- (a) Certifying body is an established national nursing organization or a subdivision thereof.
- (b) ~~[Full membership privileges are restricted to registered nurses.]~~
- (c) ~~[Eligibility requirements for certification are delineated.]~~
- (c) ~~[(d)]~~ Certification is offered in specialty areas of clinical practice.
- (d) ~~[(e)]~~ Scope and standards of practice statements are promulgated.
- (e) ~~[(f)]~~ Mechanism for determining continuing competency is established.
- (2) The board shall maintain a list of recognized national certifying organizations which is hereby incorporated by reference. A copy of the list may be obtained at the Board of Nursing office, 312 Whittington Parkway, Suite 300, Louisville, Kentucky during regular business hours.

ness hours.

Section 4. Practice Pending Registration. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for certification by a national certifying organization may be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

- (a) The applicant shall apply for certification from a recognized national certifying organization for the first time.
- (b) The applicant shall obtain an advanced registered nurse practitioner of the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this section, supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards. The supervisor shall be immediately available either on site or by telephone.
- (c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.
- (d) Practice pursuant to this provision shall extend only until the applicant has learned the results of the request for certification.
- (e) Applicants who have previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until they have been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection (1) of this section may use the title "ARNP Applicant" or "ARNP App.".

Section 5. Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire or lapse at the time the registered nurse license expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

- (a) Renew the registered nurse license on an active status.
- (b) Submit a completed application form for renewal of registration as an advanced registered nurse practitioner;
- (c) Submit current renewal application fee; and
- (d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status may not practice as or use the title of advanced registered nurse practitioner until a current active license has been issued by the board and the advanced registered nurse practitioner registration has been reinstated.

Section 6. Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

- (a) Submit a completed application form;
- (b) Submit current reinstatement application fee; and
- (c) Maintain current certification by a recognized national certifying organization.

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Section 7. Certification or Recertification. (1) An advanced registered nurse practitioner who has met requirements and has applied for current, active recertification by one (1) of the national organizations recognized in Section 3 of this administrative regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not be registered as an advanced registered nurse practitioner and may not practice or use the title of advanced registered nurse practitioner until the requirements of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall notify the board of that fact and shall not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. An application is valid for a period of one (1) year from date of submission to board. After one (1) year from date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of nurses enrolled in postbasic educational programs for preparation in advanced registered nursing practice or enrolled in advanced registered nurse practitioner refresher courses.

Section 10. Any registered nurse who holds himself out as a clinical specialist or is known as such, shall be required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures.

Section 11. Any nurse practicing as an advanced registered nurse practitioner who is not registered as such by the board, any advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or any advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: February 12, 1998

FILED WITH LRC: April 9, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 21, 1998 at 9 a.m. (EDT) 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 May 14, 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: This amendment affects national certification organizations of which at the present time there are six.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: general operating fund of the agency.

(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: The change has no effect on the environment or public health.

(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: the amendment merely removes a requirement that is no longer applicable.

(11) TIERING: Is tiering applied? Tiering is not applied since the change affects the six entities similarly.

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

**301 KAR 3:010. Public use of wildlife management areas.
[Depredation of wildlife areas.]**

RELATES TO: KRS [~~450.040;~~] 150.025, [~~450.300;~~ ~~450.460;~~] 150.620, 150.640

STATUTORY AUTHORITY: KRS [~~13A.350;~~] 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations

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necessary to carry out the purposes of KRS Chapter 150; KRS 150.620 permits the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions not in keeping with the intended purpose of wildlife management areas, sets requirements on other uses and stipulates the procedure for obtaining group use permits on these areas. [This administrative regulation is necessary to protect from any acts of depredation lands and waters owned or controlled by the Department of Fish and Wildlife Resources as fishing waters, wildlife management areas, fish hatcheries and refuges. The function of this administrative regulation is to contribute to the protection, maintenance and development of these lands and waters and their associated wildlife through regulated and prudent use by the public.]

Section 1. Definitions. (1) "Event" means:

(a) An activity conducted by a group;

(b) A commercial activity; or

(c) A field trial.

(2) "Field trial" means an event where unleashed dogs are worked and judged.

(3) "Group" means:

(a) A club, society or association;

(b) Ten (10) or more persons who gather to conduct an event; or

(c) A field trial.

(4) "Horse" means a horse, pony, mule, donkey, llama or similar beast of burden.

(5) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife or wildlife habitat.

(6) "Mechanized vehicle" means a motor vehicle, bicycle or other human conveyance except a wheelchair.

(7) "Motor vehicle" means a motor-driven conveyance, whether or not licensed for use on a public highway.

(8) "Ride" means to ride, drive or lead a horse.

(9) "Wildlife management area" means a tract of land:

(a) Controlled by the department through ownership, lease, license or cooperative agreement; and

(b) Having "wildlife management area" or "WMA" as part of its official name.

(10) "WMA" means a wildlife management area.

Section 2. While upon a WMA, a person:

(1) Shall observe the hunting dates, limits and other requirements that apply to the county in which the WMA is located, unless specific requirements are stipulated in:

(a) This administrative regulation;

(b) 301 KAR 2:049;

(c) 301 KAR 2:178;

(d) 301 KAR 2:140;

(e) 301 KAR 2:142;

(f) 301 KAR 2:144;

(g) 301 KAR 2:222; or

(h) 301 KAR 2:225.

(2) Shall wear hunter orange garments as stipulated in 301 KAR 2:172 when deer hunting with firearms is allowed.

(3) When deer hunting with breech-loading firearms is allowed, shall not:

(a) Hunt small game or furbearers;

(b) Trap; or

(c) Allow unleashed dogs.

(4) May hunt small game, furbearers, or turkey by archery during the modern gun deer season if gun deer hunting is not permitted on that WMA during the modern gun deer season.

(5) Unless specified otherwise in 301 KAR 2:049, shall not allow an unleashed dog from March 1 until the third Saturday in August, except when participating in:

(a) A department-authorized field trial;

(b) The spring squirrel season; or

(c) Training a retriever or other water dog, provided that:

1. The activity is authorized by a sign at the body of water; and
2. The dog remains leashed except while actively training in or within 100 feet of the body of water.

(6) Shall not:

(a) Hunt:

1. On a WMA or portion of a WMA designated by a sign as closed to hunting; or

2. At an established access point, launching ramp, or recreation area.

(b) Enter a portion of a wildlife management area designated by a sign as closed to public access.

(c) Discharge a firearm within 100 yards of a residence or occupied building, whether or not the building is on a WMA.

(d) Camp, except in a designated area.

Section 2. Horseback Riding. A person shall not:

(1) Ride a horse on a WMA except:

(a) On:

1. A trail or area specifically marked for horseback riding; or

2. A maintained public road open to public vehicular traffic;

(b) During an event where a horse is allowed under a permit issued under the provisions of Section 6 of this administrative regulation; or

(c) While engaged in a legal hunting activity.

(2) Allow a horse to roam or graze on department property.

(3) Tether a horse in a way that would cause damage to a tree or shrub.

Section 4. Prohibited Activities. Except as authorized by the department, on a WMA a person shall not:

(1) Damage a tree or shrub;

(2) Dump trash or litter;

(3) Set fires, except for an attended campfire;

(4) Leave a campfire unattended;

(5) Cut or damage a fence or gate;

(6) Deface or destroy a sign;

(7) Destroy, harvest or glean a crop;

(8) Allow livestock to roam freely;

(9) Dump the contents of a holding tank, portable toilet or other container holding human waste;

(10) Deface or collect artifacts from historical or archeological sites;

(11) Ignite fireworks or rockets;

(12) Collect or remove plants;

(13) Place or cause to be placed an injurious substance on land or water;

(14) Engage in an activity which:

(a) Is commercial in nature and intent; or

(b) Could:

1. Unreasonably interfere with other uses or users of the area;

2. Pose a risk to persons or property; or

3. Damage facilities, roads, trails or ecosystems of the area.

Section 5. Use of Mechanized Vehicles. Except as specifically authorized by the department, on a WMA, a person shall not:

(1) Use a mechanized vehicle except:

(a) On a maintained roads open to public use; or

(b) In a designated parking area;

(2) Operate a motor vehicle that is not properly licensed for use on a public highway;

(3) Park in a way that would:

(a) Block a road or gate; or

(b) Prevent access to a portion of the area.

Section 6. Group Permits. (1) A group shall not conduct an event

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upon department property without obtaining a permit at least thirty (30) days before the date of the event.

(2) Application for the permit shall be upon a form provided by the department.

(3) The department shall deny a permit for an event that involves:

(a) The use of mechanized vehicles, except for travel to and from the area; or

(b) An activity prohibited in Section 4 of this administrative regulation except that a commercial activity may be permitted if it is:

1. An informational booth;

2. A food vendor;

3. For collecting registration or entrance fees; or

4. A similar ancillary activity authorized by the event permit.

(4) The department may:

(a) Require the group to reschedule an event to avoid user conflicts;

(b) Restrict an event to a specified location within the WMA;

(c) Cancel a scheduled event if flooding, fire danger or other unforeseen circumstances render the WMA unsafe or unsuitable for the event; or

(d) Require the group to provide portable sanitary toilet facilities if existing facilities on the WMA are inadequate for the expected size of the group.

(5) The department shall revoke the permit and cancel an event if the group's behavior:

(a) Is rude, obnoxious, disruptive or disorderly;

(b) Creates a danger to the health or safety of other users;

(c) Results in damage to the area; or

(d) Violates a state or federal law.

(6) The department may deny a permit to a group which has had a previous event canceled under subsection (5) of this section.

Section 7. Appeal of Permit Denial. (1) A person who wishes to appeal the denial of a permit shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of denial.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held either:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) The department may present evidence and call witnesses to support the suspension or revocation.

(5) The commission shall make its decision by majority vote.

(6) A person may appeal a decision of the commission in accordance with the provisions of KRS Chapter 13B.

Section 8. On wildlife management areas not owned by the department, provisions of this administrative regulation shall not apply if:

(1) An activity prohibited by this administrative regulation is allowed by the entity owning the property; or

(2) An activity allowed by this administrative regulation is prohibited by the entity owning the property.

Section 9. Incorporation by Reference. (1) "Wildlife Management Area Use Permit Application", 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky

Department of Fish and Wildlife, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m. Monday through Friday.

Section 1. No person shall misuse the lands or waters owned or controlled by the Department of Fish and Wildlife Resources by acts such as, but not limited to, the cutting of trees, dumping of trash and littering, stealing or gleaning crops, permitting livestock to enter, cutting of fences, burning, damaging roads by entry of unauthorized equipment, or by any other act of depredation.

Section 2. Vehicles must use designated parking areas if such are available.

Section 3. Camping is permitted only in designated areas.

Section 4. No person may place any substance on or in department-owned or controlled lands or waters that may be injurious to aquatic life, wildlife or wildlife habitat, or allow any substances to escape onto lands or into waters or drainage systems of a water area.

Section 5. No vehicle, motorcycle or other mechanized equipment is permitted, except on maintained roads, unless authorized in writing by the Commissioner.

Section 6. Vehicles shall not be parked on Westvaco Public Hunting Areas in any manner which would block or deny access to any road.

Section 7. Open fires are not permitted on Westvaco Public Hunting Areas.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: April 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 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 May 22, 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: The department has 58 wildlife management areas located across Kentucky. The majority of these are open to the public and are used for hunting, fishing, wildlife viewing and other wildlife-related recreation. An estimated 100,000 persons visits these areas 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 comments received. This administrative regulation should have no impact upon the costs 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 should have no impact upon the costs of doing business.

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

1. First year following implementation: Groups wishing to conduct events on wildlife management areas will be required by this administrative regulation to submit an application and be granted a permit for the event.

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 create no additional costs nor savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Wildlife area managers will have to process and file permit applications.

(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: 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: Activities on wildlife management areas can create significant economic impact in nearby communities. This administrative regulation should not impact the nature or extent of this activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to promulgating this administrative regulation is to allow unregulated use of wildlife management areas. This alternative was rejected because unregulated use would lead to use conflicts and ecological damage to the areas.

(8) Assessment of expected benefits: Reduction in user conflicts; ability to manage wildlife management areas for their purpose of providing wildlife habitat and wildlife-related recreation.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Unregulated use of wildlife management areas could lead to environmental damage and a loss of wildlife habitat. Human, horse and vehicle use can remove ground cover and cause erosion which impacts both land and water quality.

(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: Potential for ecological damage to lands and waters on and adjacent to wildlife management areas.

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

(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.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Office of Chief State School Officer
(Amendment)**

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(b) requires [that] the Kentucky Board of Education promulgate administrative regulations governing the acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires districts to submit district technology plans which describe their unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the state board. Based on review of the unmet technology need in district technology plans, it has been determined that full implementation of KETS cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. Therefore, this administrative regulation is promulgated to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

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

(1) "Department" means the Kentucky Department of Education.

(2) "District technology plan" means the plan developed by the local school district and the Department of Education and approved by the Kentucky Board of Education.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council on Education Technology and approved by the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process, as provided by the master plan.

Section 3. Reducing Unmet Need. In categories unmet technology

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need as provided in the KETS Master Plan for Education Technology, districts shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

Section 4. Alternative Technology. Local school districts shall not be precluded from proposing alternative technologies in the local technology plan, particularly when the technology is proposed to achieve innovation.

Section 5. The KETS Master Plan for Education Technology, dated February, 1998 [~~October 4, 1995~~], is hereby incorporated by reference and may be obtained from the Office of Education Technology, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not 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 Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving 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 comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.028, requires a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions and the new teacher standards for preparation and certification.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030.

(3) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030.

(4) "Experienced teacher standards" means the standards established in 704 KAR 20:021 that identify what an effective experienced teacher shall know and do.

(5) "New teacher standards for preparation and certification" means the standards that describe what a first-year teacher shall know and be able to do in an authentic teaching situation.

(6) "Professional teaching certificate" means the document issued

to an individual upon successful completion of the beginning teacher internship and to an applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(7) "Provision teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(8) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

- (a) 1. A bachelor's degree; or
2. As required by Section 4(7)(e) and (8)(e) of this administrative regulation, a master's degree;
- (b) An approved program of preparation; and
- (c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with the experienced teacher standards or with standards adopted by the Education Professional Standards Board for a particular professional education specialty [as defined in 704 KAR 20:021].

(2) The first five (5) year renewal shall require:

- (a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or
- (b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(2).

(3) The second five (5) year renewal shall require:

- (a) Completion of the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or
- (b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(1).

(4) Each subsequent five (5) year renewal shall require completion of three (3) years of successful teaching experience with continuing growth as documented in a portfolio or completion of at least six (6) semester hours of graduate credit related to the profession of teaching by September 1 of the year of expiration.

Section 4. Grade Levels and Specializations. Preparation for a certificate shall ensure that a teacher has the knowledge and skills for the instruction of all children including an intellectually gifted and talented child or a child with a disability; is proficient in the use of technology and in the instruction for multiage and multiability grouping; and has the knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451. A teaching certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (1) Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;
- (2) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;
- (3)(a) Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

1. English and communications;
2. Mathematics;
3. Science; or
4. Social studies;

(b) Candidates who choose to simultaneously prepare for teaching in the middle school and for teaching exceptional children as provided in subsection (7) of this section shall be required to complete one (1) middle school teaching field;

(4) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

- (a) English;
- (b) Mathematics;
- (c) Social studies;
- (d) Biological science; or
- (e) Physical science;
- (5) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

- (a) Agriculture;
- (b) Business and marketing education;
- (c) Family consumer science [Home economics]; or
- (d) Industrial technology;
- (6) All grade levels with one (1) or more of the following special-

ties:

- (a) Art;
- (b) A foreign language;
- (c) Health;
- (d) Physical education;
- (e) Music; or
- (f) School media librarian;
- (7) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

- (a) Learning and behavior disorders;
- (b) Moderate and severe disabilities, 704 KAR 20:251;
- (c) Teacher of deaf and hard of hearing;
- (d) Visually impaired; or
- (e) Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires a master's degree in communication;
- (8) Endorsements to certificates identified in subsections (1) through (7) of this section, valid for all grade levels, for the following:
- (a) Computer science;
- (b) English as second language;
- (c) Gifted education;
- (d) Driver education; or
- (e) Reading and writing and requires a master's degree in reading.

Section 5. Additional Certification. A candidate who holds a certificate valid for classroom teaching shall qualify for additional certification upon:

- (1) The recommendation of an approved institution of higher education, which shall include consideration of the performance standards; and
- (2) The successful completion of each required Education Professional Standards Board assessment applicable to the additional certification being sought.

Section 6. New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to address the student academic expectations as provided by 703 KAR 4:060; to meet the content standards provided by 704 KAR 20:696; to prepare a candidate to teach children, including a child from a culturally diverse background, and manage tasks identified in the following teacher performance standards:

- (1) New Teacher Standard I, designs and plans instruction. The

teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan; and

(8) New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas.

Section 7. Effective Dates. (1) The provisions for the issuance of a teaching certificate for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998.

(2) A candidate admitted prior to January 1, 1998, under one (1) or more of the following administrative regulations shall complete the program by September 1, 2000: 704 KAR 20:057, 20:070, 20:075, 20:076, 20:078, 20:080, 20:095, 20:105, 20:115, 20:135, 20:145, 20:146, 20:159, 20:160, 20:161, 20:175, 20:180, 20:229, 20:230, 20:235, 20:255, 20:275, 20:280, 20:290, 20:340, 20:500, 20:520, and 20:570.

(3) A candidate who fails to complete the program by September 1, 2000, and does not apply for the certification by January 1, 2001 shall be required to qualify for the certification identified in this administrative regulation.

(4) A candidate admitted to an advanced level preparation program prior to September 1, 1998, shall complete the program by September 1, 2003, and shall apply for the certification by January 1, 2004.

(5) The Education Professional Standards Board shall communicate to the Kentucky a college or university approved for these programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform a candidate in the program regarding the deadline dates.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, General Counsel

APPROVED BY AGENCY: November 18, 1997

FILED WITH LRC: March 18, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 22, 1998, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 1998 five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Interim Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All candidates for advanced level preparation.

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amendment)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose. The general criteria in this administrative regulation set forth the regulatory policies.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment. "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b); which is adopted without change.]

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" means an individual with a disability who has been determined by an appropriate department staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.42.

(4) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of 20 degrees or less.

(5) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(6) "Relative" means an individual related to another individual by lineage, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(7) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.

[(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.]

Section 2. [Comparable Benefits. Except as provided in this section, the agency shall fully consider any comparable benefits available under any other program to an individual or to members of that individual's family, to meet, in whole or in part, the cost of vocational rehabilitation services:

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Assessment for determining employability and vocational rehabilitation needs;

(b) Counseling, guidance and work-related placement services;

(c) Vocational and other training services including personal and vocational adjustment training, books, and other training services that are not provided in institutions of higher education;

(d) Rehabilitation technology;

(e) Services listed in paragraphs (a) through (d) of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall not be required if that consideration would place the applicant or client at extreme medical risk or prior to the provision of services if an immediate job placement would be lost due to a delay in the provision of such comparable benefits. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(3) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) If the individual refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires

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or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released:

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response

to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Extended Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant may benefit in terms of an employment outcome.

Section 5. Employees' Application for Services. (1) [In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest,] An applicant who is an [agency] employee and the department [agency] shall adhere to the following procedures when the [such an] employee wishes to apply for rehabilitation services.

(2) [(a)] The employee shall advise the Director of Program Services or a designee [regional administrator] of the intent to apply.

(3) [(b)] The Director of Program Services or a designee and the employee [regional administrator] shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

[(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.]

Section 3. [6.] Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the Director of Program Services or a designee [branch manager]. The Director of Program Services or a designee and the individual [branch manager] shall identify [assign] a staff member who is not a relative to take the application and to provide services as deemed appropriate.

[Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.]

Section 4. [8.] Legal Fees. The department [agency] shall not be responsible for any fees incurred by an applicant or eligible individual [client] for legal services.

[Section 9. Maintenance. The agency shall not subsidize a client's home.]

Section 5. [10.] Payment Rates for Purchased Services. (1) When practicable, payment for nonemergency transportation services shall be based on a percentage of the regional capitated transportation networks rates established by the Kentucky Transportation Cabinet. [The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.]

(2) The department shall ensure that [physicians or other] vendors of services agree not to charge or accept from the applicant or eligible individual [client] or a family member any payment for services unless

the amount of ~~the~~ [such] charge or payment is previously known to and, where applicable, approved by the department [agency].

(3) ~~Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided. [The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee-for-service basis.]~~

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency and the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If a particular procedure or mode of treatment is not available in state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The commissioner may arrange for job placement services from a private for profit employment or placement agency in accordance with the informed choice of the individual.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and personal assistance shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.]

Section 6. [14:] Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.

(b) If the attending physician feels the prognosis is guarded, [the agency] staff shall request a letter indicating the individual's [client's] work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

[Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.]

Section 7. [16:] Second Opinions. The department [agency] may seek a second opinion from a qualified practitioner before determining [the] eligibility [of an applicant] or before authorizing services [for a client].

Section 8. [17:] Self-employment Enterprises. [(1)] The following shall be met prior to planning for self-employment for eligible individuals [clients of the agency]:

(1) Eligible individuals [(a) Clients] shall agree to undergo appropriate assessment to determine work potential, including mental and physical abilities, and interests, [abilities;] aptitudes, personality traits and other pertinent characteristics.

[(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.]

(c) Clients shall demonstrate that they can work with minimal or no supervision.]

(2) [(d)] The department [agency] may require eligible individuals [clients] to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(3) Eligible individuals [(e) Clients] shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.

(4) [(f)] The department [agency] may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any department [agency] purchased equipment expire.

[(2) The Director of Program Services or a designee may approve proposed self-employment enterprises requiring expenditures in excess of \$5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;

2. Applicability of statewide laws; and

3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.

(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation).]

Section 9. [18:] Sex Change. Agency funds shall not be used to pay for sex change surgery.

[Section 19. Extended Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) percent production of a nondisabled worker.]

Section 20. Supported Employment. Supported employment services exceeding \$3500 per client served in individual placements and \$1750 per client served in group placements shall require approval of the Director of Program Services or a designee.]

Section 10. [21:] Tools and Equipment. The department [agency] may recover tools, equipment, and supplies if the eligible individual [client] ceases to use the equipment for the pursuit and practice intended or upon the death of the eligible individual [client].

Section 11. [22:] Training. (1) Postsecondary training may be provided for eligible individuals [clients] pursuant to this section.

(a) Except as provided in this section, tuition and initial registration fees provided to the training facility [institution] of the eligible individual's [client's] choice shall not exceed those of the highest rate charged by a state-supported training facility [institution] in Kentucky that offers similar vocational preparation. The Director of Program

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Services or a designee may make exceptions ~~if [only when] it is clearly demonstrated that [such] exceptions are reasonable to achievement of the work plan. [financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.]~~

(b) The ~~department~~ [agency] may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(c) Other ~~department~~ [agency] approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be ~~used [utilized for clients who are deaf] if the total cost of attendance does not exceed the total cost of [provision of] tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility [institution] in Kentucky that offers similar vocational preparation.~~

(d) [Institutional] Training shall be purchased only from ~~training facilities [those schools] that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all applicable state and federal requirements [applicable to their use by the agency].~~

(e) Training shall be provided only to the ~~operative vocational [entrance] level [of the vocational objective].~~

(f) ~~Eligible individuals [Clients] planning to attend a postsecondary training facility [institution in Kentucky] shall apply for all financial assistance available through [file the Kentucky Financial Aid Form and other need analysis forms as required by] the training facility [school].~~

~~[(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.~~

~~(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.~~

~~(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, personal assistance, maintenance, and transportation.~~

~~(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.~~

~~(k) Cost of personal assistance services for clients in training shall not exceed the cost of personal assistance services in the agency sponsored attendant care program at the University of Kentucky.~~

(2) On the job training may be provided pursuant to this subsection:

(a) On the job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration; exceptions shall require approval of the Director of Program Services or a designee.

(b) On the job training for skilled occupations shall not exceed six (6) months in duration; exceptions shall require approval of the Director of Program Services or a designee.

(c) The vendor or employer shall have made a written commitment to hire the client trainee upon successful completion of the on-the-job training.

(d) The client in on the job training shall be paid at least the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on the job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to

the provision of this subsection:

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.]

Section 12. [23.] Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the ~~department~~ [agency].

Section 13. [24.] Vehicle Purchase. The ~~department~~ [agency] shall not purchase vehicles except when the occupation of the ~~eligible individual~~ [client] will require a vehicle as occupational equipment.

Section 14. [25.] Visual Impairments. ~~Eligible individuals~~ [(+) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients] with a secondary disability of visual impairment may be served [only] if another impairment, other than visual, poses the more substantial impediment to employment. [The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or administrative regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.]

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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

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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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (800) 372-7172, (VTDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants and clients of the Department of Vocational Rehabilitation are affected by the general provisions. The number of entities affected will vary.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation should have no effect on the cost of living in any geographic area in Kentucky. The department seeks positive employment outcomes for individuals with disabilities.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no direct or indirect cost or savings of doing business in Kentucky.

(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. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the department is based on a match ratio of 21.3 state dollars to 78.7 federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

(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. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361, 29 USC 706(8)(A).

2. State compliance standards. This administrative regulation details standards for the general administration of the Department of Vocational Rehabilitation that are not addressed in the federal mandate.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt policies and procedures necessary for the administration of the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. Specific criteria for employee application for services, employee relative application for services, legal fees, payment rates for purchased services, potentially terminal illnesses, second opinions, self employment enterprises, training, experimental implant procedures, vehicle purchases and services for individuals with visual impairments are not addressed in the federal mandate. This regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), [34-CFR 361.31(b)]

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Department" means the Department of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" ["Client"] means an individual who has been determined by an appropriate department [state-unit] staff

member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b) [~~which is adopted without change~~].

~~[(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.~~

~~[(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.~~

~~[(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.]~~

Section 2. Computer Hardware and Software Purchases. The department shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or eligible individuals [clients]. The department [agency] may consider the provision or upgrade or replacement of computer hardware and software if:

(1) The equipment is essential to compensate for the limitations caused by the disability; or

(2) The equipment is required for the eligible individual [client] to achieve a vocational objective of competitive employment;

(3) [~~In addition,~~] One (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation; or

(b) The equipment is required to perform [by] the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable an eligible individual [a client] to become competitive with nondisabled employees performing the same duties.

Section 3. Computer Upgrades or Replacements. ~~[(1)]~~ Computer upgrades or replacements may be provided for an eligible individual [a client] if needed for obtaining and maintaining employment.

~~[(2) Costs of upgrading or replacing computers in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.~~

~~[(3) Computer upgrades or replacements in excess of \$6,000 may be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.]~~

Section 4. Second Time Upgrades or Replacements. (1) Except as provided in this section, the department [agency] shall provide only one (1) computer upgrade or replacement per individual.

(2) The department [agency] may approve a second time upgrade or replacement under the following conditions:

(a) The eligible individual [client] has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's [client's] employer attests that the upgrade or replacement is needed to maintain employment.

Section 5. General [Computer Repair]. ~~[(1) The agency shall not provide repair to computers.~~

~~[(2) Maintenance and repair of computers beyond the warranty shall be the responsibility of the individual.~~

Section 6. Vehicle Modification [General]. (1) Modification of a van for an eligible individual [a client] who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The department [agency] may provide van modifications for eligible individuals [clients] determined by a department [the agency]

specialist [~~of the Driver Evaluation/Vehicle Modification Program~~] to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications in excess of \$5,000 shall be provided only on the recommendation of a department [the agency] specialist [~~of the Driver Evaluation/Vehicle Modification Program~~].

(4) All other individuals who [~~are not clients of the agency in~~] need [~~of~~] driver evaluation, driver training or vehicle modification may purchase [~~evaluation~~] services on a fee for service basis if all department [agency] applicants and eligible individuals [clients] have been served.

(5) Vehicle modification in excess of \$5,000 shall be provided only after the eligible individual [client] completes a driver evaluation and vehicle modification assessment by a department [~~an agency~~] specialist [~~of the Driver Evaluation/Vehicle Modification Program~~].

(6) Vehicle modifications in excess of \$5,000 shall be inspected and approved by a department [~~an agency~~] specialist [~~from the Driver Evaluation/Vehicle Modification Program~~] before payment is made.

~~[Section 7. Specific Modifications Costing Less than \$1,000. Agency staff may approve modifications to a vehicle if:~~

~~[(1) Modifications is simple and is not related to overall vehicle engine or body condition; and~~

~~[(2) Modification is not of a substantial structural nature; and~~

~~[(3) Maintenance records and overall condition of the vehicle can justify modification.]~~

Section 6. ~~[(8)]~~ Specific Vehicle Modifications Costing More than \$5,000 [~~1,000~~]. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of \$5,000 [~~1,000~~] shall be provided only for eligible individuals [clients] whose vocational objective is competitive employment and who are within two (2) years [~~one (1) year~~] of job placement.

(2) Vehicle modifications may be provided to individuals who are not within two (2) years [~~one (1) year~~] of job placement if the Director of Program Services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of \$5,000 [~~1,000~~] shall only be provided on new vehicles except as provided in this section.

(4) The department [agency] may approve vehicle modifications in excess of \$5,000 for older vehicles [~~in excess of \$1,000~~] if maintenance records and overall condition of the vehicle can justify the modification as attested by a department [~~an agency~~] specialist [~~of the Driver Evaluation/Vehicle Modification Program~~]. The modification shall demonstrate cost savings to the department [agency].

Section 7. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for an eligible individual [a client] if needed for obtaining or maintaining employment.

~~[(2) Upgrading and repair of vehicle modification in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.~~

~~[(3)]~~ Upgrade or repair of vehicle modifications in excess of \$10,000 [~~6,000~~] may be provided if the Director of Program Services determines [~~that documentation exists~~] that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 8. Second Time Modifications. (1) Except as provided in this section, the department [agency] shall provide only one (1) vehicle modification per eligible individual [client].

(2) The department [agency] may approve a second time vehicle modification under the following conditions:

(a) The eligible individual [client] has demonstrated a two (2) year continuous work history; and

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(b) The eligible individual's [client's] employer attests that the modification is needed to maintain employment; and

(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.

[Section 11: Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) ~~The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.]~~

Section 9. [12:] Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if determined essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications. The eligible individual [counselor] shall make every attempt to use [utilize] recoverable, nonpermanent modifications if possible or cost effective.

(2) ~~[The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.~~

(3) Except as provided in this section, property modifications in excess of \$10,000 [6,000] shall not be allowed.

(3) [(4)] Property modifications in excess of \$10,000 [6,000] may be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (800) 372-7172, (V/TDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity

to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation who are in need of rehabilitation technology services.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing 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: The only reporting requirements are those needed to promulgate this regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue implication.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable

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

(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: The administrative regulation is being amended to reduce internal process requirements. Process reduction will result in improved service to the department's customers.

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361, 29, USC 706(8)(A).
2. State compliance standards. This administrative regulation details the agency standards for providing rehabilitation technology to eligible individuals.
3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to adopt policies and procedures necessary for the administration of the program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes
5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. Rehabilitation technology is heavily emphasized in the 1992 amendments to the Rehabilitation Act. Technology is available to assist individuals with severe disabilities to achieve suitable employment outcomes. This regulation establishes guidelines for the provision of services that are not addressed in the Act.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:010. Procedure for adjustments of claims.

RELATES TO: KRS 342.125, 342.260, 342.265, 342.270(7), 342.710, 342.715, 342.760

STATUTORY AUTHORITY: KRS 342.260, 342.270(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate ~~[such rules and]~~ administrative regulations ~~[as are]~~ necessary to ~~[carry on the work of the department, administrative law judges, the Workers' Compensation Board and to]~~ implement the provisions of KRS Chapter 342. KRS 342.270(7) requires the commissioner to promulgate an ~~[emergency]~~ administrative regulation establishing procedures for the resolution of claims, ~~including [which shall include]~~ benefit review. This administrative regulation establishes the procedure for the resolution of claims before an arbitrator, administrative law judge, or Workers' Compensation Board. [The emergency administrative regulations shall be promulgated within 120 days of the effective date of the revisions to KRS Chapter 342 which became effective December 12, 1996. The function of this administrative regulation is to regulate practice and procedure before the arbitrators, administrative law judges and the Workers' Compensation Board.]

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Arbitrator" means an individual appointed pursuant to KRS 342.230(9).

(3) "Board" is defined by KRS 342.0011(10). [means the Workers' Compensation Board created pursuant to KRS 342.215(1).]

(4) "Civil rule" means the Kentucky Rules of Civil Procedure.

(5) "Commissioner" is defined by KRS 342.0011(9). [means the Commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.]

(6) "Date of filing" means the date a pleading, motion, or other document is received by the Commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of arbitrators, administrative law judges, and the board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.

(7) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(8) "An employer who has not secured payment of compensation"

means any employer who employs an employee ~~[covered employees]~~ as defined by KRS 342.640 but has not complied with KRS 342.340.

(9) "Special defenses" means defenses that shall be raised by "special answer" filed within forty-five (45) days of the notice of filing an application for resolution of claim, or within ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence. Special defenses shall be ~~[are]~~ waived if not timely raised. Special defenses which shall be pleaded are defenses arising under:

(a) KRS 342.035(3) unreasonable failure to follow medical advice;

(b) KRS 342.165 failure to comply with safety administrative regulation;

(c) KRS 342.316(6) and 342.335 false statement on employment application;

(d) KRS 342.395 voluntary rejection of KRS Chapter 342;

(e) KRS 342.610(3) ~~[342.310(3)]~~ voluntary intoxication and self-infliction of injury;

(f) KRS 342.710(5) refusal to accept rehabilitation services; and

(g) Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 and 342.316 shall be designated as "plaintiff" and adverse parties as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An arbitrator or administrative law judge may order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the arbitrator or administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and be submitted upon forms prescribed by the commissioner.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is resubmitted in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the parties' or representatives' last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an arbitrator or administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before arbitrator (name)", ~~[or]~~ "Before administrative law judge (name)", or "Before administrative law judge/acting arbitrator

(name)". Upon consolidation of claims, the most recent claim number shall be listed first.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating such facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, may be considered ten (10) days after the date of filing. A response ~~shall~~ [will] be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;

5. An affidavit certifying that ~~a~~ [no] previous motion to reopen has ~~not~~ been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed.

(b) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing. ~~A response shall~~ [Responses may] be served within twenty (20) days of filing the motion to reopen.

(c) Any party may use the following ~~sample~~ forms provided by the department for motions to reopen:

1. Motion to reopen by employee;
2. Motion to reopen by defendant; and
3. Motion to reopen KRS 342.732 benefits.

(7) Motion for allowance of a plaintiff's attorney fee shall be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based and be served upon the adverse parties and the attorney's client. The motion shall set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320. The motion shall be accompanied by an affidavit of counsel detailing the extent of the services rendered and the time expended, a signed and dated Form 109 as required by KRS 342.320(5) [(3)], and a copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be filed as required by KRS 342.320. The motion shall be accompanied by an affidavit of counsel detailing the extent of the services rendered and the time expended, the hourly rate and total amount to be charged, the date upon which agreement was reached for providing the legal services, and a certification of any amounts previously paid on the claim in question.

(9) The following ~~sample~~ motions relating to vocational rehabilitation training provided by the department may be used by all parties:

- (a) Petition for vocational rehabilitation training; and
- (b) Joint motion and agreement to waive vocational rehabilitation evaluation.

Section 5. Application for Resolution of an Injury Claim. (1) ~~To apply for resolution of an injury claim, the applicant shall file~~ Form 101 ~~[shall be filed]~~ with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of

injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report describing the injury which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician. Medical reports filed with an application shall be considered as evidence before the arbitrator.

(2) Defendant shall file a notice of claim denial or acceptance (Form 111) within forty-five (45) days after the date of issuance of notice that an application for resolution of claim has been filed, or within forty-five (45) days following an order sustaining a motion to reopen a claim. If none is filed, all allegations of the application shall be deemed admitted. The notice of claim denial or acceptance shall set forth all pertinent matters which are admitted and those which are denied. ~~If [in the event]~~ a claim is denied in whole or in part, a defendant shall set forth a detailed summary of the basis for denial, and the name of ~~each witness~~ [any witnesses] whose testimony may be relevant to that denial. This notice shall include a description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer. This requirement of filing a notice of admission or denial ~~shall be~~ [is] in addition to the requirement to file a special answer in accordance with Section 1(9) of this administrative regulation although a denial may incorporate special defenses which have been timely raised.

(3) Proof taking and discovery for all parties ~~shall~~ [may] proceed for a period beginning with the date of issuance of notice that an application for resolution has been filed to and including a date sixty (60) days from the date the claim is assigned to an arbitrator.

(4) During the pendency of a claim, any party obtaining a medical or vocational report or records shall serve a copy of the report ~~or~~ [and] records upon all other parties within ten (10) days following receipt.

Section 6. Application for Resolution of an Occupational Disease Claim. (1) ~~To apply for resolution of an occupational disease claim, the applicant shall file~~ Form 102 ~~[shall be filed]~~ with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupational disease. For coal related pneumoconiosis claims, the medical report shall include both a chest x-ray examination and spirometric tests ~~if~~ [when] pulmonary dysfunction is alleged. Medical reports filed with an application shall be considered as evidence before the arbitrator;

(e) Social Security earnings record release form (Form 115).

(2) Defendant shall file a notice of claim denial or acceptance (Form 111) within forty-five (45) days after the date of issuance of

notice that an application for resolution has been filed, or within forty-five (45) days following an order sustaining a motion to reopen a claim. If none is filed, all allegations of the application shall be deemed admitted. The notice of claim denial or acceptance shall set forth all pertinent matters which are admitted and those which are denied. ~~If [in the event]~~ a claim is denied in whole or in part, a defendant shall set forth a detailed summary of the basis for denial, and the name of each witness ~~[any witnesses]~~ whose testimony may be relevant to that denial. This notice shall include a description of the physical requirements of plaintiff's job on the alleged date of last exposure; the names of any witnesses; and the name, address, and telephone number of the individual responsible for gathering this information for the employer and its insurer, if any. This requirement of filing a notice of admission or denial shall be ~~[is]~~ in addition to the requirement to file a special answer in accordance with Section 1(9) of this administrative regulation although a denial may assert the special defenses set out above.

(3) For all occupational disease or hearing loss claims, the commissioner shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

(4) Proof taking and discovery for all parties shall ~~[may]~~ proceed for a period beginning with the date of issuance of notice that an application for resolution of claim has been filed to and including a date sixty (60) days from the date the claim is assigned to an arbitrator.

(5) During the pendency of a claim, any party obtaining a medical or vocational report or records shall serve a copy of the report and records upon all other parties within ten (10) days of the receipt.

Section 7. Application for Resolution of a Hearing Loss Claim. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 [shall be filed] with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician. Medical reports filed with an application shall be considered as evidence before the arbitrator;

(e) Social Security earnings record release form (Form 115).

(2) Defendant shall file a notice of claim denial or acceptance (Form 111) within forty-five (45) days after the date of issuance of notice that an application for resolution of claim has been filed, or within forty-five (45) days following an order sustaining a motion to reopen a claim. If none is filed, all allegations of the application shall be deemed admitted. The notice of claim denial or acceptance shall set forth all pertinent matters which are admitted and those which are denied. ~~If [in the event]~~ a claim is denied in whole or in part, a defendant shall set forth a detailed summary of the basis for denial, and the name of each witness ~~[any witnesses]~~ whose testimony may be relevant to that denial. This notice shall include a description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer. This requirement of filing a notice of admission or denial shall be ~~[is]~~ in addition to the requirement to file a special answer in accordance with Section 1(9) of this administrative regulation although

a denial may incorporate special defenses which have been timely raised.

(3) Proof taking and discovery for all parties shall ~~[may]~~ proceed for a period beginning with the date of issuance of notice that an application for resolution has been filed to and including a date sixty (60) days from the date the claim is assigned to an arbitrator.

(4) During the pendency of a claim, any party obtaining a medical or vocational report or records shall serve a copy of the report or ~~[and]~~ records upon all other parties within ten (10) days following receipt.

Section 8. Benefit Review Before Arbitrator. (1) The arbitrator to whom the claim is assigned shall ~~[may]~~ discuss voluntary resolution of the claim with the parties by telephone conference or in a benefit review conference and may require the parties to submit written stipulations of fact.

(2) ~~If~~ [When] a claim is resolved, the parties shall complete an agreement as to compensation (Form 110) or prepare for entry an agreed resolution of the claim. The parties shall ~~[then]~~ tender the agreement as to compensation or agreed resolution to the arbitrator for approval.

(3) A benefit review conference, if held, shall be attended by the plaintiff and representative, if any, and by the defendant or its representative, if any. The benefit review conference shall be an informal proceeding and a ~~[no]~~ transcript or recording of the conference shall not be made. The parties shall, at the conference, dispose of controversies if ~~[whenever]~~ possible and define disputed issues.

(4) Proof before an arbitrator shall be submitted by way of medical or vocational report and, for lay witnesses, by way of affidavit.

(a) A report of a medical evaluator pursuant to KRS 342.315 shall become evidence before the arbitrator without the filing of a notice or motion.

(b) Cross-examination may occur at the expense of the party seeking that cross-examination and may be had only upon motion to the arbitrator setting forth good cause for the need of cross-examination. A motion to permit cross-examination shall be made within ten (10) days following filing of the medical report or affidavit, or notice of assignment to an arbitrator, whichever last occurs. [No] More than two (2) medical reports shall not [may] be placed in evidence by any party without prior approval of the arbitrator.

(5) Additional proof may be submitted in the following forms:

(a) Any party may take a deposition of another party if the party agrees to be deposed. Notice of the deposition shall be given to all parties.

(b) A deposition shall be considered as evidence only if it is filed prior to the expiration of proof time.

(c) Parties may present written questions to other parties who have not been deposed but not to witnesses who are not parties. Questions shall not be presented after thirty (30) days from the date the claim is assigned to an arbitrator..

(d) Answers to written questions may be submitted as evidence in accordance with the following:

1. A party may present a maximum of fifteen (15) questions to each ~~[other]~~ party;

2. Each portion of a question requiring a separate answer shall be counted as a separate question;

3. Questions shall be presented in nontechnical terms and shall not request legal conclusions be made by the answering party.

4. The following questions shall not count towards the maximum number of questions allowed:

a. A question requesting the name of the answering party; and

b. A question requesting whether the party is willing to supplement answers if pertinent information later becomes available.

5. The party on whom the questions have been served shall serve a copy of the answers within fifteen (15) days after the service of the questions.

6. Answers to the questions shall be signed by the responding party, whose signature shall be notarized and may be admitted into evidence by any party by notice to all parties and the arbitrator.

7. If the defendant-employer is not a natural person, the defendant-employer shall designate an individual to answer the questions, and the attorney for the Special Fund shall be deemed to be answering on behalf of the Special Fund.

(6) If a claim is not voluntarily resolved, the arbitrator shall, within ninety (90) days of assignment of the claim, render a written benefit review determination setting forth matters stipulated, matters denied, findings of fact, and conclusions of law.

(7) At any time during the benefit review process, an arbitrator may determine that the pending claim presents factual issues best resolved through a hearing before an administrative law judge and enter an order transferring the claim to an administrative law judge for further proceedings.

Section 9. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal workers' pneumoconiosis pursuant to KRS 342.732, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with the contract entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) For all other claims, the commissioner, an arbitrator, or an administrative law judge, in their discretion, or upon motion by a party, may direct appointment by the commissioner of a medical evaluator in accordance with contracts with the University of Kentucky and University of Louisville medical schools.

(3) Upon referral for medical evaluation under this section, the parties may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;

(b) Submitted by way of medical reports, notes, or depositions;

(c) Clearly legible;

(d) Indexed;

(e) Furnished in chronological order;

(f) Timely furnished to all other parties pursuant to Section 5(4) of this administrative regulation;

(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;

2. Include the date of medical services;

3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses. Upon completion of the evaluation the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) [(4)] The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) [(5)] Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) [(6)] Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 10. Medical Reports. (1) A party shall not [may] introduce direct testimony from [no] more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an arbitrator or administrative law judge.

(2) Medical reports shall be submitted on Form 107-I (injury),

Form 107-P (psychological) or Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, ~~[or on such other forms as the commissioner may designate,]~~ except that an arbitrator or administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(6) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an [no] objection is not filed. Objection to the filing of a medical report shall be filed within ten (10) days of the notice or the motion for admission. Grounds for the objection shall be stated with particularity. The arbitrator or administrative law judge shall rule on the objection within fifteen (15) days of the filing.

(7) In proceedings before an administrative law judge, if a medical report is admitted as direct testimony, any adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Interlocutory Relief. (1) At any time during a claim, a party may seek any or all of three (3) forms of interlocutory relief:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(b);

(b) Medical benefits pursuant to KRS 342.020;

(c) Rehabilitation services pursuant to KRS 342.710;

(2) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(3) Entitlement to interlocutory relief shall [may] be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party is eligible under KRS Chapter 342 and will suffer irreparable injury, loss or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(4) If [When] interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result [thereby]. The arbitrator or administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the arbitrator or administrative law judge's own motion, interlocutory relief shall [may] be terminated and the claim removed from abeyance.

(5) An attorney's fee in the amounts authorized by KRS 342.320 that does not [but in no event to] exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(6) An appropriate party may use the following [sample] forms provided by the department with regard to interlocutory relief:

(a) Motion for interlocutory relief;

(b) Affidavit for payment of medical expenses;

(c) Affidavit for payment of temporary total disability; and

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(d) Affidavit regarding rehabilitation services.

Section 12. Appeals to Administrative Law Judges from Benefit Review Determinations. (1) Within thirty (30) days after the date of the filing of a written benefit review determination or ruling on petition for reconsideration from that benefit review determination by an arbitrator, any party [parties] aggrieved by the determination may appeal to an administrative law judge. No appeal shall be taken from a written benefit review determination that does not grant or deny the ultimate relief sought as to all parties without the need for further steps to be taken.

(2) The appeal shall be initiated by filing a "Request for Hearing before an Administrative Law Judge". The proceedings before the administrative law judge shall be de novo and cross appeals shall not be permitted. The appealing party shall be designated as petitioner and all parties against whom the appeal is taken as respondents. In the event that more than one (1) party appeals, the first party to file shall be designated petitioner and all other parties shall be designated respondent. The petitioner shall certify copies have been served upon all other parties.

(3) The commissioner shall assign the claim to an administrative law judge and shall notify the parties of the schedule for presentation of proof and the time and place of the hearing. The scheduling order shall provide forty-five (45) days for all parties to present proof, thirty (30) days for a party designated as defendant in the proceeding before the arbitrator [respondents-only], and fifteen (15) days for rebuttal for a party designated as plaintiff in the proceeding before the arbitrator.

(4) Within fifteen (15) days following assignment to an administrative law judge, the parties shall file a statement of proposed stipulations, notice of contested issues, and designation of any admissible evidence in the benefit review record upon which they intend to rely on appeal before the administrative law judge. Any party who fails to file a timely statement of proposed stipulations shall be bound by stipulations made before the arbitrator, subject to relief under Section 17(2) of this administrative regulation. Admissible evidence in the benefit review record that is properly designated by a party shall be considered as filed in the record before the administrative law judge and shall not be resubmitted.

(5) The administrative law judge may order an informal conference for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(6) At least fifteen (15) days prior to the scheduled hearing, each party [all parties] shall serve a witness list [witness-lists] and copies of known exhibits on all other parties and upon the commissioner. Except for good cause shown, any person [persons who are] not listed as a witness [witnesses] shall not present testimony. Each witness list [Witness-lists] shall state the name of each proposed witness and summarize the testimony of the witness, and shall identify matters in controversy. For each medical witness [medical witnesses], the summary shall include a diagnosis, the physical findings, the results of diagnostic studies supporting the diagnosis, and an assessment of functional impairment in accordance with the most recent edition of the AMA Guides to Evaluation of Permanent Impairment.

(7) Except for evidence timely designated by the parties, information submitted to the arbitrator shall not be considered evidence before the administrative law judge. Proof and discovery before the administrative law judge shall be by way of notice of introduction of medical reports and depositions of lay witnesses. However, a report of a medical evaluator pursuant to KRS 342.315 shall become evidence before the administrative law judge without the filing of a notice or motion.

(8) If, during the pendency of a claim before an administrative law judge, the parties voluntarily resolve a claim, an Agreement as to Compensation (Form 110) or agreed opinion and award [resolution of

the claim] shall be submitted for the approval of the administrative law judge.

Section 13. Appeals to Administrative Law Judges from Final Orders. (1) Within thirty (30) days after the date of filing of a final order of an arbitrator other than a benefit review determination or ruling on a petition for reconsideration from that benefit review determination, any party aggrieved by the order may file a "Request for De Novo Review by an Administrative Law Judge". As used in this section "final order" means one that grants or denies the ultimate relief sought as to all parties without the need for further steps to be taken.

(2) The appealing party shall be designated as petitioner and all other parties shall be designated as respondents. The petitioner shall certify copies have been served upon all other parties.

(3) The request for de novo review by an administrative law judge shall not exceed five (5) pages, and shall contain a clear and concise statement of the material facts, the questions of law involved and the specific reasons for which the request was filed. The request shall cite any authority for petitioner's position.

(4) The respondents shall have fifteen (15) days after the request for de novo review is filed [thereafter] in which to file responses which shall not exceed five (5) pages, setting forth the basis of their opposition to the request.

(5) The commissioner shall refer the matter to an administrative law judge, who shall issue a decision [affirming, modifying, or setting aside the appealed order] within thirty (30) days after the date of the last response or the date on which the response was due.

Section 14. Transfer to Administrative Law Judge. (1) If [~~In the event~~] an arbitrator determines the claim presents factual issues best resolved through a hearing before an administrative law judge, an order shall be entered by the arbitrator and shall be served upon all parties and the commissioner.

(2) The commissioner shall upon receipt of a transfer order issue an order scheduling proof time, assigning to an administrative law judge, and scheduling the time and place of hearing.

(3) Upon transfer to an administrative law judge, the claim shall proceed in the manner established in Section 12(3) through (8) [~~as provided in Section 12(3) to (8)~~] of this administrative regulation. The parties shall continue to be designated as plaintiff and defendant after transfer.

Section 15. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Affidavits submitted with an application for resolution of claim and in proceedings before an arbitrator shall constitute evidence before the arbitrator [~~notwithstanding the Kentucky Rules of Evidence~~]. Affidavits of parties and lay witnesses shall be permitted and encouraged in proceedings before an arbitrator.

(3) Any party may file as evidence before the arbitrator or administrative law judge pertinent material, and relevant portions of hospital, Armed Forces, or Social Security records. An opinion of a physician which is expressed in these records [~~However, opinions of physicians which may be expressed in such records~~] shall not be considered by an arbitrator or administrative law judge in violation of the limitation on the number of physician's opinions established [~~set forth~~] in KRS 342.033.

Section 16. Extensions of Proof Time. (1) Extensions of time for producing evidence may [shall] be granted upon a showing of a circumstance that prevents [~~only upon showing of circumstances preventing~~] the party from timely introducing proof. Motions for extension of time shall not be filed [no] later than five (5) days before the deadline sought to be extended. The motion or supporting

affidavits shall set forth:

- (a) The efforts to produce the evidence in a timely manner;
- (b) Facts which prevented timely production; and
- (c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) ~~[thirty (30) day]~~ extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants ~~if [should]~~ an extension ~~is [be]~~ granted to a defendant, and shall extend the time of the adverse party automatically except ~~if [when]~~ the extension is for rebuttal proof.

Section 17. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue ~~shall warrant [warrants]~~ imposition of sanctions as established [provided] in Section 26 [25] of this administrative regulation. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation ~~if [provided that]~~ the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 18. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board. In proceedings before arbitrators, depositions and questions shall be propounded in accordance with Section 8 of this administrative regulation.

(2) Depositions may be taken by telephone ~~if [provided]~~ the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall [must] relate the following information:

- (a) That the deposition is to be taken by telephone;
- (b) The address and telephone number from which the call will be placed to the witness;
- (c) The address and telephone number of the place where the witness will answer the deposition call; and
- (d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall [must] contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number shall [will] be assigned to a physician upon the filing of the physician's qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications shall [may] be revised or updated by submitting revisions to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of a physician.

Section 19. Wage Certification. If at any time during the pendency of a claim wages are at issue, the employer shall promptly complete and serve a completed form AWW-1 on all other parties.

Section 20. Hearings. (1) At hearing, the parties shall present proof concerning contested issues. If plaintiff fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall [may] be taken under submission immediately or briefs may be ordered. Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be [are] limited to five (5) pages. Permission to increase the length of a brief shall [may] be sought by motion. The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion. ~~[In any event,]~~ A decision shall be rendered no later than sixty (60) days following hearing. The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion as established by [set forth in] Section 1 of this administrative regulation.

(3) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing and briefs may be ordered. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 21. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a benefit review determination or a final order or award of an arbitrator or administrative law judge, ~~[a party may petition for reconsideration,]~~ clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The arbitrator or administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 22. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. ~~A [No]~~ discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall [should] be calculated as follows:

(a) Determine the entire lump sum liability:

1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award.
2. Discount the number of weeks remaining in the award at the prescribed discount rate.
3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in award. This product equals the entire future lump sum liability for the award.
4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum represents the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be [is] computed by determining its total weeks of liability less the number of weeks of liability past due.
2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.
3. Multiply the number of past due weeks by the amount of the weekly benefit.
4. The employer's entire liability for lump sum payment shall be [is] determined by adding the results of paragraph (b) ~~(e)~~ 2 and 3 of this subsection.

(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder

shall be [is] the Special Fund's lump sum liability.

(2) If [Where] the employer settles its liability for income benefits with the employee for a lump sum payment and [thereafter] a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

[Example #1. In a 1996 claim covered by KRS 342.1202 apportionment, an agreement between the employer and employee is reached settling the claim for a lump sum payment in the 150th week after permanent disability has commenced. It is subsequently determined that the worker has a forty (40) percent permanent partial occupational disability and the employee is a maximum wage earner. The Special Fund's payment period commences on the date of approval of the settlement agreement and extends for the balance of the 425 week period or 275 weeks. The Special Fund's total liability for half of the forty (40) percent permanent partial disability award is computed, then divided by 275 weeks. Thus, the Special Fund's liability of \$26,515.75 $(\$311.96 \times 40\% \times 212.5 \text{ weeks})$ is divided by the 275 weeks remaining for a weekly payment of \$96.42.

Example #2. Assume the same factual situation in example #1 with fifty (50) percent apportionment to the Special Fund, but increase the award to sixty (60) percent permanent partial disability. The Special Fund's payment period still commences on the date of approval of the settlement agreement and extends for the balance of the 520 week period or 370 weeks. Thus, the Special Fund's entire liability of \$48,666.80 $(\$311.96 \times 60\% \times 260 \text{ weeks})$ would be paid out weekly at \$131.53 for 370 weeks. Figures in these examples are rounded to the nearest cent and do not include any adjustment for tier down of benefits pursuant to KRS 342.730(4).]

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for [upon] the claim. [Thereafter,] The Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the "same terms" as the employer shall mean [means] the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. [For example, if the employer pays in a lump sum, the Special Fund shall have the option to pay its proportionate liability in a discounted lump sum.] "Same terms" shall [does] not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits [payments] for which the Special Fund is not liable.

(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3). [six (6) percent present value table (May 1997 edition);]

Section 23. Appeals to Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final award or order of an administrative law judge any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the petitioner and all parties against whom the appeal is taken as respondents. The administrative law judge who rendered the order appealed from shall be named as a respondent. If appropriate, the Director of the Special Fund or the Director of the Coal Workers' Pneumoconiosis Fund shall be named as a respondent pursuant to KRS 342.120 or 342.1242 [342.316]. The workers' compensation claim number shall be set forth in all pleadings before the board.

(3) Any party other than the petitioner may file a cross-appeal through notice of cross-appeal filed within ten (10) days after notice

of appeal is served. The cross-appeal shall designate the parties as appropriate (i.e., petitioner-cross-respondent).

(4) Notice of appeal, cross-appeal and all other pleadings before the board shall be served as established by [provided in] Section 3 of this administrative regulation. The commissioner shall issue an acknowledgement to all parties of the filing of a direct appeal [only].

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue. All subsequent appeal time in the case shall be calculated from the date the transcript of hearing is filed instead of the date of filing of notice of appeal.

(6) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal. The organization and contents of petitioner's brief shall be as provided in Civil Rule 76.12(4)(c) except an [no] index shall not be required and the appendix shall [only] include copies of decision appealed, petitions for reconsideration, rulings on petitions, and cases cited from federal courts and foreign jurisdictions.

(7) Respondent's brief shall be filed within thirty (30) days of the date petitioner's brief was served. Organization and contents shall be provided in Civil Rule 76.12(4)(d) except an [no] index shall not be required and the appendix shall [only] include copies of cases cited from federal courts and foreign jurisdictions. If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(8) Failure of a party to timely file a brief may be grounds [is ground] for imposition of one (1) or more of the following sanctions [penalties]:

- (a) Affirmation or reversal of the final order;
- (b) Striking of an untimely brief;
- (c) A fine of not more than \$500; or
- (d) Dismissal of appeal of petitioner's original brief.

(9) If applicable, the petitioner's reply brief shall [may] be served within fifteen (15) days after the date on which the last respondent's brief was served or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an [no] appendix, index, or contents page shall not be required. If the petitioner is also a cross-respondent, a combined brief shall address issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within fifteen (15) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e) except that an [no] appendix, index, or contents page shall not be required.

(11) Petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each, reply briefs to five (5) pages, and combined briefs to twenty (20) pages. Permission to increase the length of a brief shall be sought by motion.

(12) All pleadings shall conform to the requirements set forth in Civil Rule 7.02(4) and shall be filed without covers. The style of the case, including the claim number and title of the pleading, shall appear on the first page of the pleading.

(13) The board shall enter its decision affirming, modifying, or setting aside the order appealed from, or [in its discretion] may remand the claim to an administrative law judge for further proceedings. Motions for reconsideration shall not be [are not] permitted.

(14) If applicable, the decision of the board shall [may] be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(15) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of any motion; and, any intermediate order may be issued on the signature of any board member.

Section 24. Coverage - Insured Status. [(1) Arbitrators and

administrative law judges shall take judicial notice that compliance with KRS Chapter 342 is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the provisions of KRS Chapter 342 pursuant to KRS 342.395 and 342.400.

(2) Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If [Should] an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the arbitrator or administrative law judge and all parties by service of a certification of no coverage.

Section 25. Withdrawal of Records. (1) A [No] portion of any original record of the department shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final. A party filing an exhibit may make arrangements to claim an exhibit prior to that time. If an unclaimed exhibit has no money value, it shall be destroyed; if an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property; if an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency; and, if an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 26. Sanctions. Pursuant to KRS 342.310, an arbitrator, an administrative law judge, and the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds. A sanction may [Whenever justice will be served, penalties shall] be assessed against an offending attorney or representative rather than against the party [client the attorney represents]. If [Where] a party is a governmental agency and attorney's fees are assessed, the [such] fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar [like] services had a private attorney been retained. Failure of a party to timely file any pleading required by this administrative regulation may be treated by an arbitrator, an administrative law judge, or the board as prosecuting or defending without reasonable grounds.

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an arbitrator or administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS [Chapter] 342.340 and:

(a) Thirty (30) days have expired since the finality of an award and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award; [or]

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an arbitrator or administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment [thereof], who has failed to secure payment of

compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund.

(4) The [sample] form, Motion for Payment from Uninsured Employers' Fund, provided by the department may be used by the employee.

Section 28. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age shall [is to] be determined as of the date of the evaluation. Height shall [is to] be measured while the plaintiff stands in his stocking feet and shall be rounded to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

(2) Formulas established by the guidelines for predicted normal FVC and FEV1 shall be applied and predicted values computed. [For example, the formula applicable to men for FVC and FEV1 as set forth in the Fourth Edition of the guides are:

FVC in liters equals 0.06 times H minus 0.0244 times A minus 4.650;

FEV1 in liters equals 0.0414 times H minus 0.0244 times A minus 2.19;

H is height in centimeters;

A is age in years.]

Section 29. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall tender a written request for participation to the Kentucky coal workers' pneumoconiosis fund within thirty (30) days. This request shall be in writing and upon a form supplied by the Director of the Kentucky Coal Workers' Pneumoconiosis fund and shall be accompanied by the following documents:

(a) Plaintiff's application for resolution of claim;

(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;

(c) All medical evidence upon which the award or settlement was based;

(d) Final benefit review determination, opinion, or order of an arbitrator or administrative law judge determining liability for benefits, or order approving settlement agreement. If an administrative law judge's award was appealed, appellate opinions shall be attached;

(e) If the request for participation includes retraining incentive benefits under KRS 342.732, the employer shall certify that the plaintiff meets the relevant statutory criteria;

(f) If the request for participation is for settlement of a claim, the employer shall certify that the settlement agreement represents liability for benefits in the claim, and does not include any sums for claims which the plaintiff may have against the employer.

(2) Within thirty (30) days following receipt of a completed request for participation, the director shall notify the employer and all other parties of acceptance or denial of the request.

(3) A denial shall [may] be made upon a finding by the director that the employer failed to defend the claim or entered into a settlement agreement not supported by the medical evidence or which was procured by fraud or mistake. Denial shall be in writing and shall state the specific reasons for the director's action.

(4) Denial of a request for participation may be appealed to an administrative law judge within thirty (30) days following receipt. The administrative law judge shall determine if [whether] the denial was arbitrary, capricious, or in excess of the statutory authority of the director, and [but] shall not reexamine the weight assigned to evidence by an arbitrator or administrative law judge in a benefit review determination or award.

(5) The employer shall promptly commence payment on all of the

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liability pursuant to the benefit review determination, award, or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis fund is established. This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.

(6) Upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis fund does not prevail, it shall reimburse the employer for its proportionate share of the liability together with interest at the rate established [set forth] in KRS 342.040.

Section 30. Assignment to Arbitrators. (1) The assignment of appropriate claims to arbitrators pursuant to KRS 342.270(2) shall begin March 15, 1997.

(2) Provisions in this administrative regulation which apply solely to practice before an arbitrator shall apply [only] to claims which are assigned to an arbitrator pursuant to KRS 342.270(2) and Section 29(1) [28(+)] of this administrative regulation.

Section 31. Forms. [(+)] After March 15, 1997, the Department of Workers Claims shall not [will no longer] accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation [adopted by this administrative regulation]. Outdated applications or forms submitted after March 15, 1997 shall [may] be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 32. Incorporation by Reference. (1) [(2)] The following material is incorporated [incorporation] by reference:

- (a) Form 101, "Application for Resolution of Injury Claim", (January 1, 1997 Edition), Department of Workers Claims;
- (b) Form 102, "Application for Resolution of Occupational Disease Claim", (January 1, 1997 Edition), Department of Workers Claims;
- (c) Form 103, "Application for Resolution of Hearing Loss Claim", (January 1, 1997 Edition), Department of Workers Claims;
- (d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Department of Workers Claims;
- (e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Department of Workers Claims;
- (f) Form 106, "Medical Waiver and Consent", (January 1, 1997 Edition), Department of Workers Claims;
- (g) Form 107-I, "Medical Report - Injury", (January 1, 1997 Edition), Department of Workers Claims;
- (h) Form 107-P, "Medical Report - Psychological", (January 1, 1997 Edition), Department of Workers Claims;
- (i) Form 108-OD, "Medical Report - Occupational Disease", (January 1, 1997 Edition), Department of Workers Claims;
- (j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (January 1, 1997 Edition), Department of Workers Claims;
- (k) Form 108-HL, "Medical Report - Hearing Loss", (January 1, 1997 Edition), Department of Workers Claims;
- (l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Department of Workers Claims;
- (m) Form 110-I, "Agreement - Injury", (April 15, 1998 [January 1, 1997 Edition]), Department of Workers Claims;
- (n) Form 110-O, "Agreement - Occupational Disease", (April 15, 1998 [January 1, 1997 Edition]), Department of Workers Claims;
- (o) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;
- (p) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;

(q) Form 115, "Social Security Release Form", (January 1, 1997 Edition); and Department of Workers Claims;

(r) Form AWW - 1, "Average Weekly Wage Form", (January 1, 1997 Edition), Department of Workers Claims;

(s) Lump Sum Settlement Tables, (April 15, 1997 Edition), Department of Workers Claims;

(t) Six (6) Percent Present Value Table (May, 1997 Edition);

(u) Form MIR-1, Motion for Interlocutory Relief [Sample form; Affidavit for Payment of Medical Expenses] (May 29, 1997 Edition);

(v) Form MIR-2, Affidavit for Payment of Medical Expenses [Sample form; Affidavit for Payment of Temporary Total Disability] (May 29, 1997 Edition);

(w) Form MIR-3, Affidavit for Payment of Temporary Total Disability [Sample form; Affidavit Regarding Rehabilitation Services] (May 29, 1997 Edition);

(x) Form MIR-4, Affidavit Regarding Rehabilitation Services [Sample form; Petition for Vocational Rehabilitation Training] (May 29, 1997 Edition);

(y) Form VRT, Petition for Vocational Rehabilitation Training [Sample form; Motion for Interlocutory Relief] (May 29, 1997 Edition);

(z) Form MTR-1, [Sample form;] Motion to Reopen by Employee (May 29, 1997 Edition);

(aa) Form MTR-2, [Sample form;] Motion to Reopen KRS 342.732 Benefits [by Defendant] (May 29, 1997 Edition);

(bb) Form MTR-3, [Sample form;] Motion to Reopen by Defendant [KRS 342.732 Benefits] (May 29, 1997 Edition);

(cc) Form WVR, [Sample Form;] Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (May 29, 1997 Edition);

(dd) Form UEF-P, [Sample form;] Motion for Payment from Uninsured Employers' Fund (May 29, 1997 Edition).

(2) [(3)] This material may be inspected copied or obtained at the Department of Workers' Claims Monday through Friday, 9 a.m. to 4 p.m. at the following locations:

(a) Frankfort - Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on May 21, 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 May 14, 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 comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on May 21, 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: Carla H. Montgomery or Donna E. Floyd, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-5550, Ext. 465; Fax (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Elsen Floyd

(1) Type and number of entities affected: This administrative regulation will affect the parties to workers' compensation claims. Employers, employees, insurers, the Uninsured Employers' Fund, and attorneys representing these persons or entities will be affected. Over 5,000 contested workers' compensation claims are filed with the Department of Workers' Claims each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. No impact on cost of living and employment is 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: No public comments were received. No impact on cost of doing business is anticipated.

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

1. First year following implementation: The forms used in the practice of workers' compensation cases have been revised and provisions have been added regulating practice before arbitrators as well as administrative law judges. Overall compliance, reporting, and paperwork requirements remain essentially the same.

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: Additional costs will be incurred for the initial printing of new forms. This cost is not expected to be significant.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Little or no change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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. Not expected to have an economic impact different from that of the present regulation.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: House Bill 1, enacted December 12, 1996, by the Kentucky General Assembly significantly revised KRS Chapter 342. This amended regulation is necessary to implement those revisions and clarify the administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(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: No 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 appropriate since multiple classes are not involved. This proposed amended regulation applies equally to all

litigants before arbitrators, administrative law judges and the Workers' Compensation Board.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

810 KAR 1:001. Definitions.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the commission's administrative regulations.

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these administrative regulations.

(4) "Association" means any person or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner principal by virtue of notarized appointment of agency lodged with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in the mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breeder" means the owner of the dam of a horse at the time the horse was foaled. A horse is "bred" at the place of its foaling.

(9) "Claiming race" means any race in which every horse running therein may be transferred in conformity with these administrative regulations.

(10) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(11) "Commission" means the Kentucky State Racing Commission. Commissioner is a member of the commission.

(12) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight. Racing day means a day on which races are conducted. Calendar days means consecutive days counted irrespective of number of racing days.

(13) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these administrative regulations.

(14) "Disciplinary action" means action taken by the stewards or the commission for a violation of an administrative regulation and can include suspension, revocation, voidance of a license, ejection or exclusion from association grounds, assessment of a forfeiture, or reprimand, any combination thereof.

(15) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(16) "Entry" means the act of nominating a horse for a race in conformance with these administrative regulations.

(17) "Equipment" means accouterments other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit,

shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(19) "Field, or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizator, and the highest numbered horse within the numbering capacity of the totalizator and all horses of a higher number are grouped in the mutuel field.

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(21) "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race. A "free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(22) "Horse" means a thoroughbred registered with the Jockey Club in New York and when used in these administrative regulations, any thoroughbred irrespective of age or sex designation.

(23) "Ineligible" means a horse or person not qualified under these administrative regulations or conditions of a race to participate in a specified racing activity.

(24) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(25) "Lessee" means a licensed owner whose interest in a horse is a leaseholder.

(26) "Licensee" means a person or association that has been duly issued a currently valid license to participate in racing in this Commonwealth.

(27) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(28) "Match race" means a race between two (2) horses, for which no other horses are eligible.

(29) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(30) "Month" means calendar month.

(31) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(32) "Mutuel field" means the same as "field."

(33) "Nominator" means the person in whose name a horse is entered for a race. "Nomination" is a subscription or entry of a horse in a stakes or early closing race.

(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(35) "Place" when used in the context of a single position in the order of finish in a race, means second; when used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second.

(36) "Post" means the starting point of a race.

(37) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(38) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(39) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(40) "Purse" means the gross cash portion of the prize for which a race is run.

(41) "Purse race" means any race for which entries close less than seventy-two (72) hours prior to its running, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(42) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(43) "Racing official" means a racing commissioner, commission staff as duties require, and all association racing department employees, as duties require.

(44) "Recognized meeting" means any meeting with regularly scheduled races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club of New York and whose race records can be provided an association by the Jockey Club.

(45) "Registration certificate" means the document issued by the Jockey Club of New York certifying as to the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the Jockey Club. It shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a registration certificate when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(46) "Administrative regulations" when used in the plural, shall be deemed to mean all current administrative regulations promulgated by the commission; when used in the singular, shall be deemed to be confined to the numbered administrative regulation.

(47) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(48) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries therefor in conformance with these administrative regulations.

(49) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(50) "Secretary" means the duly appointed and currently serving secretary of the commission.

(51) "Specimen" means a sample of blood, urine, or other specimen taken or drawn from a horse for chemical testing.

(52) "Stakes" means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race. These fees shall be included in the purse.

(53) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. These stakes races, other than North American shall exclude races not listed by the Jockey Club Information System International Cataloguing Standards, Part One (1).

(54) "Stewards" means duly appointed racing officials with powers and duties specified in 810 KAR 1:004 serving at a current meeting

in this Commonwealth.

(55) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(56) "Subscription" means nomination or entry of a horse in a stakes race.

(57) "Thoroughbred racing" means running contests between horses registered with the Jockey Club of New York, certified as having a thoroughbred pedigree, and ridden by a jockey. Thoroughbred racing shall be licensed by a governmental regulatory body.

(58) "Unplaced" means not among the first three (3) horses finishing a race.

(59) "Walkover" means a race in which the only starter or all starters represent single ownership.

(60) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(61) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(62) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).

(63) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(64) "Year" means twelve (12) consecutive months beginning with January and ending with December.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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: Bernie Hettel

(1) Type and number of entities affected: This will affect any thoroughbred owner who races his horse(s) in a stakes race. In 1997 there were approximately 6,033 individuals licensed as owners 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. None

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

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

competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: N/A

(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: This change will clarify the term "stakes race".

(11) Tiering: Is tiering applied? Tiering was not applied. This change will clarify that a stakes race will exclude races that are not listed by the Jockey Club Information System International Cataloguing Standards, Part One.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; if:

(1) The person is a licensed stable employee assistant trainer, or trainer with at least one (1) year of service with a racing stable; and

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions to be permitted the probationary mounts; and

(3) The starter has schooled the person breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race; and

- (4) The stewards determine that the person:
- (a) Intends to become a licensed jockey;
 - (b) Possesses the physical ability to be a jockey; and
 - (c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race.
- (5) A person shall not ride in any probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

- (1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;
- (2) Shall have served at least one (1) year with a racing stable;
- (3) Shall have ridden in at least three (3) races;
- (4) Shall, when required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall be approved by the stewards as to competency of horsemanship, shall be granted an amateur jockey's license, and his amateur status shall be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

- (1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty-five (35) ~~[thirty (30)]~~ winners; if he has ridden a total of forty (40) ~~[thirty-five (35)]~~ winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year. If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year from the date of the fifth winning mount, or until the 40th winning mount.

- (2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may be claimed for a period in excess of two (2) ~~[three (3)]~~ years from the date of the rider's fifth winner unless an extension has been granted.

- (3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years. These contracts shall be:

- (a) Approved by the stewards;
- (b) Filed with the racing commission; and
- (c) Binding in all respects on the parties to the contract;
- (d) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate, on a form furnished by the commission.
- (4) If an apprentice jockey is unable to ride for a period of seven (7) ~~[fourteen (14)]~~ consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, or restrictions on racing, or other valid reason the commission upon recommendation of the stewards and after consultation with the racing authority which

approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the Kentucky Racing Commission. All riding contracts for terms longer than thirty (30) days, as well as any amendments, cancellation, or transfer, shall be in writing with signature of parties notarized, and shall be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

- (1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of the contract;
- (2) The contract employer possesses the character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;
- (3) The contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

- (1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;
- (2) Ride or agree to ride any horse in a race without consent of his contract employer;
- (3) Share any money earned from riding with his contract employer;
- (4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but merely provide a fee if the parties have not made any other agreement to the contrary. The fee to a jockey shall be, in the absence of special agreement, as follows:

- (a) Purse \$2,000 to \$3,400: Winning mount, ten (10) percent of win purse; Second mount, \$45; Third mount, \$35; Losing mount, \$30.
- (b) Purse \$3,500 to \$4,900: Winning mount, ten (10) percent of win purse; Second mount, \$55; Third mount, \$45; Losing mount, \$35.
- (c) Purse \$5,000 to \$9,900: Winning mount, ten (10) percent of win purse; Second mount, \$65; Third mount, \$50; Losing mount, \$40.
- (d) Purse, \$10,000 to \$14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$45.
- (e) Purse, \$15,000 to \$24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$50.
- (f) Purse, \$25,000 to \$49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$60.
- (g) Purse, \$50,000 to \$99,900: Winning mount, ten (10) percent

of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$75.

(h) Purse, \$100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; the owner or trainer shall pay an appropriate fee to each rider engaged for the race.

(b) When a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause.

(c) When a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or racing commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. No rider shall have contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is

engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. No rider 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 riding. 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.

Section 14. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. Advertising, promotional, or cartoon symbols or wording which in the opinion of the commission are not in keeping with the traditions of the turf are prohibited. Beginning January 1, 1994, each jockey or jockey apprentice shall wear in all races a 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. A safety vest shall weigh no more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race. The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: April 8, 1998
FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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.

ADMINISTRATIVE REGISTER - 2450

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Hettel

(1) Type and number of entities affected: All jockeys and apprentice jockeys who race in Kentucky. In 1997 there were 230 jockeys and apprentice jockeys licenses 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. None

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: N/A

(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 changes will make these regulations more uniform with other states and will encourage apprentice jockeys to continue their education or obtain their GED.

(11) Tiering: Is tiering applied? Tiering was not applied. These changes will make our regulation more uniform with other states. Also, it will encourage apprentice jockeys to continue their education.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

810 KAR 1:015. Claiming races.

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), 230.260(3) requires that the commission promulgate administrative regulations prescribing conditions governing horse racing. This administrative regulation prescribes conditions for claiming races.

Section 1. (1) In claiming races a horse shall be subject to claim for its entered price by a licensed owner in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows:

(a) An applicant shall, fifteen (15) days prior to entering a claim, submit:

1. An application for owners original license;

2. A financial statement;

3. A finger print card;

4. The name of a licensed trainer, or person eligible to be licensed as a trainer, who will assume care and responsibility for the horse claimed; and

5. The requisite fee for owners license.

(b) The certificate of eligibility shall be valid for the remainder of the calendar year.

(2)(a) A claim may be made by an authorized agent.

(b) An agent may claim only for the account of those for whom he is licensed as agent.

(c) The name of the authorized agent; and the name of the owner for whom the claim is being made shall appear on the claim slip.

(3) A person shall not claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.

(b) A claimed horse shall not remain in the same stable or under the care or management of the owner or trainer from whom it is claimed.

(4)(a) A person shall not claim more than three (3) horses ~~one (1) horse~~ from a race.

(b) Multiple claims submitted by the same authorized agent and/or trainer for a single horse shall not be permitted and shall be void. ~~[An authorized agent shall not submit more than one (1) claim for a race.~~

(c) Only one (1) claim shall be entered on behalf of a stable in a race if a stable consist of horses:

1. Owned by more than one (1) person; and

2. Trained by the same trainer.]

(5)(a) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed.

(b) The day following the day the horse is claimed shall be the first day;

(c) The claimed horse shall be entitled to enter whenever necessary to permit it may start on the 31st calendar day following the claim.

(d) This subsection shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper, and starter allowance races.

(6)(a) A horse claimed in a claiming race shall not be sold or transferred, wholly or in part, within thirty (30) days after the day it was claimed, except in another claiming race.

(b) Unless the stewards grant permission for a claimed horse to enter and start at an overlapping or conflicting meeting in Kentucky, a horse shall not race elsewhere until the close of entries of the meeting at which it was claimed.

(7)(a) A claim shall be:

1. Made on Commission "Claim Blank";

2. Sealed in an envelope supplied by the Commission; and

3. Deposited in the association's claim box.

(b) The "Claim Blank" form and envelope shall be filled out completely and accurately.

(8)(a) Claims shall be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made.

(b) Money or its equivalent shall not be put in the claim box.

(c) A claim shall be valid if the claimant at the time of filing the claim has a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall:

(a) Open the claim envelopes for each race as soon as the horses leave the paddock en route to the post; and

(b) Check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11)(a) After the race has been run a horse that has been claimed shall be delivered to the claimant.

(b) The claimant shall present written authorization for the claim from the racing secretary.

(c) After written authorization has been presented, horses that are sent to the detention area for post race testing shall be delivered.

(d) Other horses shall be delivered in the paddock.

(e) A person shall not refuse to deliver a horse claimed out of a claiming race to the person legally entitled to the horse.

(f) If the owner of a horse that has been claimed refuses to deliver the horse to the claimant, the horse shall be disqualified from further racing until delivery is made.

(12)(a) A claim shall be irrevocable.

(b) Title to a claimed horse shall be vested in the successful claimant from the time the horse is a starter; and the funds transferred to the account of the previous owner, with said funds immediately available for future claiming transactions.

(c) The successful claimant shall become the owner of the horse whether it is:

1. Alive or dead;
2. Sound or unsound; or
3. Injured during the race, or after it.

(d) A claimed horse shall run in the interest of and for the account of the owner from whom it is claimed.

(13)(a) A person shall not offer to:

1. Enter, or enter into an agreement to claim, or not to claim; or
2. Attempt, or attempt to prevent another person from claiming any horse in a claiming race.

(b) A person shall not attempt by intimidation to prevent anyone from running a horse in a claiming race.

(c) An owner or trainer shall not make an agreement with another owner or trainer for the protection of each other's horse in a claiming race.

(14)(a) A claim that does not comply with the provisions of this administrative regulation shall be void.

(b) The stewards shall be the judges of the validity of a claim.

(15) A person holding a lien of any kind against a horse entered in a claiming race shall record the lien with the racing secretary or horseman's bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be presumed that none exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

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

- (a) "Claim Blank (Rev 96)"; and
- (b) Claim Blank envelope.

(2) This material may be inspected at Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511,

Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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: Bernie Hettel

(1) Type and number of entities affected: All horses who race in claiming races will be affected. There are approximately 900 to 1,000 horses claimed each year at Kentucky thoroughbred tracks.

(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. A claimed horse shall not be run for 30 days after being claimed in a race in which the determining eligibility price is less than 25% more than the price for which the horse was claimed.

(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: No increase in paperwork will be required.

(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: 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: The proposed amended wording would be more humane for the horse by making anyone who claims a horse wait for thirty days before running the horse in another race.

(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:

(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 proposed changes would broaden the availability to claimants and would benefit horse owners options on participation.

(11) Tiering: Is tiering applied? Tiering was not applied. These changes will allow persons to claim multiple horses from a race. It also alters the restrictions on the horse after it is claimed.

**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)**

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements relating to the running of a race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, no race shall be started after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. No person shall touch a horse while in the paddock except its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the horse. If a trainer is to be absent from a track where his horses are participating in races, he shall provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. Every horse whose starting is obligatory shall run the course; except, the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post, the parade shall pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed

twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the jockey shall remount at the point at which thrown. If the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, the horse may be excused from parading with the other horses. The horse shall en route to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an injury occurs to any jockey or his equipment malfunctions, the starter may grant a delay to permit the substitution of a jockey or repair of equipment. During the delay, the starter may permit any jockey to dismount. If a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate. The starter shall reload the horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey, starter, or assistant starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist the horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the commission shall be used in starting all races on the flat except in cases permitted by the stewards. If a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutual tickets. After consulting with the starter and viewing the patrol films or video tapes, the stewards then shall determine whether the horse was precluded from obtaining a fair start.

(2) If the stewards find the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; except if the horse ruled a nonstarter is part of a mutual entry and another horse in the entry is not left at the post, there shall be no pari-mutuel refund.

(3) Stakes fees for the ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and thereby left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefor.

Section 11. Horses Failing to Finish. Any horse which starts in a race, but does not cross the finish line, or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced. Any portion of the purse that may normally accrue to the

horse shall revert to the association.

Section 12. Fouls. A leading horse when clear is entitled to any part of the track. If a leading horse or any other horse in a race, swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause same, such shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. No horse shall be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse suspected of unformful racing. If the stewards find that the horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Whips. (1) In all races where a jockey will not ride with a whip, an announcement shall be made over the public address system of such fact.

(2) Although the use of a whip is not required, any jockey who uses a whip during a race is prohibited from whipping a horse:

(a) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;

(b) During the post parade except when necessary to control the horse;

(c) Excessively or brutally causing welts or breaks in the skin;

(d) When the horse is clearly out of the race or has obtained its maximum placing; or

(e) Persistently even though the horse is showing no response under the whip.

(3) Correct uses of the whip are:

(a) Showing horses the whip before hitting them;

(b) Using the whip in rhythm with the horse's stride; and

(c) Using the whip as an aid to maintain a horse running straight.

Section 16. Other Means of Altering Performance. [Use of Whips; Other Means of Altering Performance. Whips shall be used uniformly and the stewards shall take cognizance of unusual use or nonuse of a whip by a jockey.] No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change thereof shall be approved by the stewards.

Section 17. [16-] Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has

been properly run in accordance with the rules and administrative regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter such official order of finish for the purposes of pari-mutuel wagering.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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: Bernie Hettel

(1) Type and number of entities affected: All jockeys and apprentice jockeys will be affected. Whips are standard equipment for a race, although a few jockeys may elect not to use their whip during the 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:

(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: 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: N/A

(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: This change will clarify the usage of the whip anytime a horse is on the track.

(11) Tiering: Is tiering applied? Tiering was not applied. This change will more clearly define the use of the whip during and before a race.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

811 KAR 1:090. Stimulants and drugs.

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

STATUTORY AUTHORITY: KRS 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 provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. (1) Except as provided herein, at every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of:

- (a) Drug;
- (b) Stimulant;
- (c) Sedative;
- (d) Depressant; or
- (e) Medicine.

(2) The tests shall be conducted on the:

- (a) Winning horse in every heat and race;
- (b) Winning horse and second place horse in every perfecta or quinella race;

(c) Winning horse, or the second and third place horses in a trifacta, or each of them.

(3) The judges may order a horse in a race to be subjected to a urine test, or blood test, or both.

(4) The winning horse and second place horse in every heat or dash of a race at a track with a total purse in excess of \$5,000 may be subjected to a blood test, or a urine test, or both tests.

(5) A test shall be made by a qualified veterinarian and by a laboratory designated by the commission.

(6)(a) A positive test during a time trial shall be treated as a violation.

(b) The winning time shall be disallowed, and the trainer of record shall be:

- 1. Fined; or
- 2. Suspended; or
- 3. Fined and suspended.

(7) In its discretion, or at the request of a member, the commission may authorize or require a blood test, or urine test, or other test of a horse racing at a meeting.

Section 2. (1)(a) When a blood or urine sample is taken by a

veterinarian, the owner, trainer or authorized agent shall be present.

(b) A sample shall be:

- 1. Placed in two (2) containers;
- 2. Immediately sealed, with the signature of the representative of the owner or trainer on the container.

(c) One (1) part of the sample shall be placed in a depository under the supervision of the presiding judge or other agency designated by the commission to be safeguarded until the report on the chemical analysis of the other portion of the split sample has been received.

(2) If a positive report has been received, an owner or trainer may request the commission to have the other portion of the split sample:

- (a) Inserted with a subsequent group sent for testing; or
- (b) Sent to another chemist for analysis, the cost of which shall be paid by the owner or trainer.

Section 3. (1) If there is a positive test finding the presence of a drug, stimulant, sedative, or depressant in the postrace test, the:

- (a) Laboratory shall immediately notify the presiding judge; and
- (b) Presiding judge shall immediately report the finding to the commission.

(2) If a positive report is received from the laboratory by the presiding judge:

- (a) The person held responsible shall be notified; and
- (b) A thorough investigation shall be conducted by or on behalf of the judges.

(3)(a) A time shall be set by the judges for a hearing to dispose of the matter.

(b) The time set for the hearing shall not exceed four (4) racing days after the responsible person was notified.

(c) The hearing shall be continued if the judges determine that circumstances justify a continuance.

(4) If the chemical analysis of blood, urine, or other sample of the postrace test taken from a horse indicates the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.

(5) Upon receipt of written notification of a positive test finding, the judges shall immediately suspend the horse from further participation in racing.

Section 4. A person who administers, influences, or conspires with another person to administer to a horse a drug, medicament, stimulant, depressant, narcotic, or hypnotic within forty-eight (48) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 [45] of this administrative regulation.

Section 5. If the postrace test or tests prescribed in Section 1 of this administrative regulation disclose the presence in a horse of a drug, stimulant, depressant or sedative, in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse with the intent to affect the:

- (1) Speed or condition of the horse; and
- (2) Result of the race in which it participated.

Section 6. A horse shall not be tubbed in ice in the paddock prior to its racing commitment.

Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.

(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test.

(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the

horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a drug, stimulant, sedative, depressant, or other substance that could result in a postrace positive test.

Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:

(a) Required by the provisions of this administrative regulations; or

(b) Ordered by the judges.

(2) The owner, trainer, driver, or agent of the owner of a horse that refuses to submit to a prerace blood test shall be required to submit the horse to a postrace blood test, or urine test, or both tests regardless of its finish.

(3) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse who refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 16 [45] of this administrative regulation.

Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.

(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:

(a) Forfeited; and

(b) Paid over to the commission for redistribution among the remaining horses in the race entitled to them.

(3) A forfeiture and redistribution of winnings shall not effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 10. Prerace Blood Test. If there is a prerace blood test that shows that there is an element present in the blood indicative of a stimulant, depressant, or unapproved medicament, the:

(1) Horse shall immediately be scratched from the race; and

(2) Officials shall conduct an investigation to determine if Section 5 of this administrative regulation was violated.

Section 11. Hypodermic Syringe Prohibited. (1) Except for a licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a drug, stimulant, or narcotic:

(a) Within the grounds of a licensed harness race track; or

(b) In or upon the premises which he occupies, or has a right to occupy; or

(c) In his personal property or effects.

(2) A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:

(a) Keep a log of his activities on "Veterinary Report Of Horses Treated"; and

(b) Submit a copy of "Veterinary Report Of Horses Treated" to the commission office of the track each day of a race meeting.

(2) The log shall include the:

(a) Name of horse;

(b) Nature of ailment;

(c) Type of treatment; and

(d) Date and hour of treatment.

(3) The veterinarian shall report to the presiding judge any internal medication given by him by injection or orally to a horse after he has been declared to start in any race.

Section 13. (1) A veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall:

(a) Use only one (1) time disposable type needles; and

(b) Not reuse a disposable needle.

(2) The disposable needles shall be kept in his possession until disposed of by him off the track.

(3) A veterinarian, assistant veterinarian or his employee shall not leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 14. (1) Approval and prescription of lasix for racing shall be made:

(a) By the commission veterinarian, or a licensed veterinarian approved by the commission; and

(b) If the:

1. Commission or licensed veterinarian has seen the horse bleed from the nostrils; or

2. Horse has been scoped and declared a bleeder by the commission veterinarian or a licensed veterinarian.

(2) If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting.

(3) Only the commission veterinarian may administer lasix prior to a race, including qualifying, nonbetting, pari-mutuel races, and time trials.

(4) The use of oral lasix shall be forbidden.

(5) The commission shall keep a record of horses using lasix for the first time.

(6) A schedule for scoping shall be maintained by the commission veterinarian.

(7) No more than 250 milligrams four (4) hours prior to a race shall be administered.

(8) A fee of ten (10) dollars shall be paid to the commission veterinarian when lasix is administered to a horse.

(9) If a trainer no longer wishes to use lasix:

(a) A "Termination of Lasix" shall be submitted to the commission office at the track; and

(b) Before being allowed to race without lasix, a horse shall:

1. Perform in a qualifying race without the use of lasix; and

2. Meet the standards of the meeting; and

(c) A horse shall qualify and meet the standards of the meeting prior to being permitted to use lasix again.

(10)(a) Testing shall be quantitative, and with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner.

(b) Testing shall be at random, not to exceed six (6) samples per day.

(c) A mutual decision to take random samples shall be made by the commission veterinarian and the judges.

(d) A second violation of this subsection shall result in a fine against the owner, not to exceed \$5,000.

(11)(a) If a horse bleeds through normal treatment with lasix, the horse shall not be eligible to race for 120 days.

(b) After 120 days, the horse shall again qualify on lasix. If the horse bleeds, it shall not be eligible to race for one (1) year.

Section 15. Phenylbutazone. (1) Trainers who wish to race their horse(s) on phenylbutazone must complete the Phenylbutazone Use Form. This form must be submitted to the commission veterinarian by the prescribed scratch time.

(2) Trainers who wish to remove their horse(s) from the phenylbutazone program must complete the Phenylbutazone Removal Form. This form must be submitted to the commission veterinarian by the prescribed scratch time.

(3) Horses which are not properly registered shall not be

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permitted to race with phenylbutazone.

(4) The oral or intravenous administration of phenylbutazone shall not be permitted within twenty-four (24) hours of post time of the first race.

(5) The phenylbutazone dosage administered shall not exceed:

(a) Two (2) grams (g) oral; or

(b) Two (2) grams (g) intravenous.

(6) Any post race sample reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be subject to the penalties provided in Section 16 of this administrative regulation.

(7) The trainer of any horse that tests above the normal limit for phenylbutazone shall be held responsible.

(8) The oral administration of phenylbutazone may be performed by the trainer.

(9) Phenylbutazone, injected intravenously, must be administered by the commission veterinarian or a licensed veterinarian approved by the commission.

(10) The commission veterinarian or licensed veterinarian shall keep a log of this phenylbutazone activity as set forth in Section 12(1) of this administrative regulation.

Section 16. Unless otherwise provided, the penalty for violation of the provisions of this administrative regulation shall be:

(1) A fine not to exceed \$5,000;

(2) Suspension not to exceed one (1) year;

(3) A fine not to exceed \$5,000, and a suspension not to exceed one (1) year; or

(4) Expulsion.

Section 17. [46:] Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Termination of Lasix, KRC-1(8/97)"; and

(b) "Veterinary Report Of Horses Treated, KRC-2(8/97)".

(2) This material may be inspected, copied, or obtained at Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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: Bernie Hettel

(1) Type and number of entities affected: This change concerns any standardbred horse racing on phenylbutazone. Approximately 25% of all racing standardbred horses use phenylbutazone.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: N/A

(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: Standardbred racing in Kentucky has always used these phenylbutazone rules. Having this rule incorporated as a regulation would make it easier for the stewards/judges to enforce any irregularities in the administering of phenylbutazone.

(11) Tiering: Is tiering applied? No tiering was applied. Having this rule incorporated as a regulation will make it easier for the stewards/judges to enforce any irregularities in the administering of phenylbutazone.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

811 KAR 1:215. Kentucky Standardbred Development Fund.

RELATES TO: KRS 230.770

STATUTORY AUTHORITY: KRS 230.770(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.770(1) established the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, and authorized the commission to promulgate administrative regulations to establish the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund. The function of this administrative regulation is to establish eligibility stan-

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dards, administrative practices to enforce the standards, establish mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. (1)(a) An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Kentucky Standardbred Development Fund, shall register the stallion by February 1 of the breeding season with the Kentucky Racing Commission.

(b) Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the Commonwealth of Kentucky for the remainder of the breeding season.

(2) A virgin standardbred stallion entering stud for the first time:

(a) May be registered prior to his first breeding; and

(b) Shall stand in the Commonwealth of Kentucky the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere.

(3) A stallion shall be registered on "Application for Standardbred Stallion Certificate for Eligibility".

Section 2. The following fees shall be paid:

(1) Sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full advertised stud fee.

(2) Sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of \$200.

(3) The annual stallion registration fee shall follow the gait of the stallion.

(4) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for the breeding season.

(5) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Kentucky Racing Commission a list of mares bred and prices charged.

Section 3. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal" shall be filed by February 1 of the breeding season.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of \$200 for stallions with an annual book of twenty-four (24) or less mares.

(4) The annual stallion registration fee shall follow the gait of the stallion.

Section 4. An owner of a standardbred stallion registered with the commission shall submit by October 1 the stallion registration fee, as set forth in Sections 2 and 3 of this administrative regulation, and a report of each stallion and mares bred by each stallion during the preceding twelve (12) months.

Section 5. In order to qualify for the Kentucky Standardbred Development Fund, a foal shall be the product of the mating of a mare with a Kentucky registered and resident stallion.

Section 6. (1) If an owner or a lessee of a registered stallion fails to furnish information the commission has requested relating to the registration or renewal of registration of a horse, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Schedule a hearing, pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the failure to furnish information was willful and:

(a) Suspend the registration; or

(b) Rescind its suspension of the registration; or

(c) Deny or revoke the registration; or

(d) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

Section 7. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the commission at a hearing pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the person knew or had reason to know that the information was false or misleading, and:

(a) Rescind its suspension or denial of the registration; or

(b) Suspend, deny, or revoke the registration; or

(c) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

(a) Shall suspend or deny the registration of the stallion;

(b) Notify in writing the person of the action taken by the commission; and

(c) May:

1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

Section 8. An owner or lessee of a stallion eligible or the Kentucky Standardbred Development fund shall designate a resident of Kentucky as the authorized agent who shall be responsible for:

(1) The registrations and records of the farm; and

(2) Complying with the requirements of the Kentucky Standardbred Development Fund.

Section 9. The "Authorized Agent" form shall be filed with the stallion registration.

Section 10. Sires stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund shall be subject to administrative regulations promulgated by the Kentucky Racing Commission.

Section 11. A participant in a Kentucky sires stakes race shall have:

(1) Been sired by a stallion registered with the Kentucky Racing Commission; and

(2) Maintained eligibility for the Kentucky Standardbred Development Fund.

Section 12. Each race shall be a one (1) mile dash.

Section 13. Post positions for the final, consolation, and elimination races shall be an open draw.

Section 14. (1) There shall be no more than:

(a) Nine (9) starters per final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) mile track.

(2) If more than nine (9) horses for a mile track or (8) eight horses for a one-half (1/2) mile track declare in, eliminations shall be held the week before the final race.

(3) All horses shall be on the gate for the final race.

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Section 15. (1) There shall be a \$500 starting fee for each horse declared to race.

(2) The starting fee shall be payable to the racing association at the time of declaration.

(3) Purses for the final races and the consolation races shall consist of:

(a) Nominating fees;

(b) Sustaining fees;

(c) Stallion fees; and

(d) Added money from the Commonwealth of Kentucky.

(4) These monies shall be divided as follows:

(a) Eighty (80) percent for the final race, and twenty (20) percent for the consolation race in each sex and gait division; or

(b) All money to the final race, if there is not a consolation race in that sex and gait division.

(5) Elimination races shall be raced for the \$500 starting fee.

(6) No further payments shall be required to start.

Section 16. (1) The total number of horses entered shall determine the number of elimination races that shall be required.

(2) The number of horses entered to require elimination races to be split into divisions shall be as follows:

(a) One (1) mile track:

1. Nine (9) horses entered or less - no elimination race(s) shall be required.

2. Ten (10) to twelve (12) horses entered - one (1) elimination race.

3. Thirteen (13) to eighteen (18) horses entered - two (2) elimination races.

4. Nineteen (19) to twenty-seven (27) horses entered - three (3) elimination races.

5. Twenty-eight (28) to thirty-six (36) horses entered - four (4) elimination races.

6. Thirty-seven (37) to forty-five (45) horses entered - five (5) elimination races.

7. Forty-six (46) to fifty-four (54) horses entered - six (6) elimination races.

(b) One-half (1/2) mile track:

1. Eight (8) horses entered or less - no elimination race shall be required.

2. Nine (9) to ten (10) horses entered - one (1) elimination race.

3. Eleven (11) to sixteen (16) horses entered - two (2) elimination races.

4. Seventeen (17) to twenty-four (24) horses entered - three (3) elimination races.

5. Twenty-five (25) to thirty-two (32) horses entered - four (4) elimination races.

6. Thirty-three (33) to forty (40) horses entered - five (5) elimination races.

7. Forty-one (41) to forty-eight (48) horses entered - six (6) elimination races.

Section 17. Starters for the final races, if eliminations are required, shall be as follows:

(1) One (1) mile track:

(a) Two (2) elimination races - the first four (4) horses from each race and one (1) horse drawn from the fifth place finishers.

(b) Three (3) elimination races - the first three (3) horses from each race.

(c) Four (4) elimination races - the first two (2) horses from each race and one (1) horse drawn from the third place finishers.

(d) Five (5) elimination races - the winners from each race and four (4) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(2) One-half (1/2) mile track:

(a) Two (2) elimination races - the first four (4) finishers from each

race.

(b) Three (3) elimination races - the first two (2) horses in each race and two (2) horses drawn from the third place finishers.

(c) Four (4) elimination races - the first two (2) horses from each race.

(d) Five (5) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from all six (6) races and two (2) horses drawn from the second place finishers.

Section 18. (1) There shall not be a consolation race if:

(a) Less than fifteen (15) horses declare in to the stake on a one (1) mile track; and

(b) Less than fourteen (14) horses declare in to the stake on a one-half (1/2) mile track.

(2) If a consolation race is not held, all monies shall be added to the final race.

Section 19. (1) Gait shall be specified by the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 20. A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgeling division; and

(2) Filly divisions.

Section 21. (1) The purses for all races shall be distributed on the following percentage basis:

(a) 50-25-12-8-5: five (5) starters or more;

(b) 55-25-12-8: four (4) starters;

(c) 55-30-15: three (3) starters;

(d) 65-35; two (2) starters; and

(e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 22. (1) If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the eligible horses for the uncontested event at the time the event is canceled.

(2) The eligible horses shall include only horses that made the three (3) payments required by 811 KAR 1:215, Section 30.

(3) The added monies provided by the Commonwealth of Kentucky shall be:

(a) Rolled over into the following year; and

(b) Distributed evenly between the races of each:

1. Age;

2. Sex; and

3. Gait.

(4)(a) If the race is drawn, the monies shall be equally divided among the horses entered to start;

(b) The monies shall include:

1. Stake payments;

2. Declaration fees;

3. Purses provided by the Kentucky Standardbred Development Fund; and

4. Added monies provided by the Commonwealth of Kentucky.

Section 23. Starters shall declare in at each track at the time specified and advertised by the association conducting the event.

Section 24. (1) At the declaration a started shall:

(a) Show at least one (1) charted race line with no breaks within

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forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. A two (2) year old trotter shall have been timed in 2:14 or faster;
2. A two (2) year old pacer shall have been timed in 2:12 or faster;
3. A three (3) year old trotter shall have been timed in 2:10 or faster; and
4. A three (3) year old pacer shall have been timed in 2:08 or faster.

(2)(a) If an eligibility certificate or a clear photocopy of the eligibility certificate is not on deposit with the race secretary at the time of declaration, the declaration shall be rejected.

(b) A horse shall be scratched from a race if the:

1. Horse has a start subsequent to the sending of the eligibility certificate or photocopy; and
2. Declarer has not advised the race secretary of the commitment to race.

(c) The requirements of this subsection shall apply to wagering and nonwagering races.

Section 25. (1) At a scheduled meeting of the commission, the commission:

(a) Shall establish the following year's distribution of funds for stake races; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for sires stakes shall be issued after the track's race dates are set.

Section 26. The Kentucky Standardbred Development Fund shall provide a trophy for each event.

Section 27. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible as a three (3) year old.

Section 28. Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 29. (1) Yearlings of 1998 and before shall be nominated by May 15.

(2) A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

(3) Fees shall be twenty (20) dollars each.

(4) Beginning with the yearlings of 1999 (breeding season of 1997), the yearling nomination fee shall be:

- (a) Forty (40) dollars each; and
- (b) Due by May 15 of the yearling year.

(5) A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate.

(6)(a) If the May 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required.

(b) The late supplemental payment shall be accepted if:

1. It is received by April 1 of the two (2) year old; and
2. The two (2) year old March 15th payment has been made.

(7) A fee shall be payable to the Kentucky Standardbred Development Fund in U.S. funds.

(8) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS
Foals of 1997 and Before

March 15th	\$100
May 15th	\$200
Declaration Fee (for each track)	2% of actual purse

March 15th payment makes entry eligible as a three (3) year old.

(b) TWO (2) YEAR OLD PAYMENTS
Foals of 1988 and Thereafter

March 15	\$200
April 15	\$200
May 15	\$200
Declaration Fee	\$500

March 15 payment is mandatory to make entry eligible as a three (3) year old.

(c) THREE (3) YEAR OLD PAYMENTS
Foals of 1997 and Before

February 15	\$100
March 15	\$200
Declaration Fee (for each track)	2% of actual purse

(d) THREE (3) YEAR OLD PAYMENTS
Foals of 1998 and Thereafter

February 15	\$200
March 15	\$200
April 15	\$200
Declaration Fee (for each race)	\$500

Section 31. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Standardbred Stallion Certificate for Eligibility";
- (b) "Standardbred Stallion Certificate of Eligibility Renewal"; and
- (c) "Authorized Agent" form.

(2) This material may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: April 8, 1998
FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1998, at 10 a.m. at the office 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 May 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: Bernie Hettel

(1) Type and number of entities affected: All stallion owners who nominate their horses to the Kentucky Standardbred Development Fund will be affected. In 1997 there were 24 stallions nominated the fund.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

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available from the public comments received. None

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: N/A

(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: These changes would alleviate any questions as to when the stallion nominations are due.

(11) Tiering: Is tiering applied? Tiering was not applied. This change will specify when the stallion nomination fee is due.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation established an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" is defined by KRS 318.010(11).

(7) "Department" is defined by KRS 318.010(1).

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Waste-water Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and

Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dekitite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Thermo-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product is not approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater: Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

- (14) Johns Manville Flex I drain roof drain system.
- (15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.
- (16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.
- (17) Elkay Aqua-chill water dispensers.
- (18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.
- (19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.
- (b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.
- (20) Interceptors.
- (a) Town and Country plastic interceptors to be used as a grease trap.
- (b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.
- (c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.
- (d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.
- (e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.
- (f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.
- (21) Plastic Oddities Srv (sewer relief vent) clean-out.
- (22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.
- (23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.
- (24) Eljer plumbing ware - Elgers ultra one/G water closet.
- (25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.
- (b) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.
- (26) Exemplar Energy garden solar water heater.
- (27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.
- (28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.
- (b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.
- (29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved for repairs using dissimilar materials or sizes.
- (30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.
- (31)(a) Laticrete 9235 Waterproof Membrane to be used as a

safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Pañella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

FRANK PHIEFFER, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: April 13, 1998

FILED WITH LRC: April 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1998 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

Contact person: Judith G. Walden. Office of General Counsel,

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Department of Housing, Buildings and Construction, The 127 Building,
1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502)
564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product in the state.

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable with this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings, and Construction Division of Plumbing (Amendment)

815 KAR 20:055. Water heater devices.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.200

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 General Assembly amended [The 1984 General Assembly enacted] KRS 318.200 to require, regardless of the class of city or county in which the sale occurs in Kentucky, [which requires] that all retailers, wholesalers and installers of water heating devices, as defined in KRS 318.200, to forward the name and address [a list of names and addresses] of the purchaser [purchasers] along with the serial number [numbers] of the device purchased to the department or to the appropriate agency of county or city government having jurisdiction within [every] thirty (30) days of the purchase. This administrative regulation is to assure that [the] submittal of the information is in a format compatible with operating procedures of the department. [This administrative regulation applies only to sales in first and second class cities and urban county government. This amendment is necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.]

Section 1. Reporting Requirements. [Manufacturers:] Manufacturers, wholesalers, retailers and installing contractors selling water heating devices shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the name and address of purchasers, including the serial number of the water heater, on Form PLB-94, Water Heater Report Form, incorporated by reference. [required information if they act in the capacity of a retailer by selling their product directly to the end user. The required information shall be submitted on Form PLB-90 format as shown or other form as authorized by the department.

WATER HEATER REPORT FOR THE COMMONWEALTH OF KENTUCKY MANUFACTURER

Manufacturer _____
Address _____
City _____ State _____ Zip Code _____
Name _____
Make (Gas) _____ (Electric) _____
(Oil) _____ (Other Fuels) _____
Size (Gallons) _____ Serial No. _____ Model No. _____
Purchaser _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

Section 2. Wholesalers. Distributors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-91 format as shown:

WATER HEATER REPORT FOR THE COMMONWEALTH OF KENTUCKY DISTRIBUTOR

Manufacturer _____
Address _____
Make (Gas) _____ (Electric) _____
(Oil) _____ (Other Fuels) _____
Size (Gallons) _____ Serial No. _____ Model No. _____

Distributor- _____
 Address- _____
 City _____ State _____ Zip Code _____
 Purchaser- _____
 Address- _____
 City _____ State _____ Zip Code _____
 Date Sold- _____

Section 3. Retailers and Installing Contractors. Retailers and installing contractors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-92 format as shown:

**WATER HEATER REPORT FOR
 THE COMMONWEALTH OF KENTUCKY
 RETAILER OR INSTALLING CONTRACTOR**

Manufacturer- _____
 Name- _____
 Make (Gas) _____ (Electric) _____
 (Oil) _____ (Other Fuels) _____
 Size (Gallons) _____ Serial No. _____ Model No. _____
 Retailer or Installing Contractor- _____
 Address- _____
 City _____ State _____ Zip Code _____
 Buyer- _____
 Address- _____
 City _____ State _____ Zip Code _____
 Date Sold- _____

Section 2. Material Incorporated by Reference. (1) Form PLB-94, November, 1991, "Water Heater Report Form" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, Division of Plumbing, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601 between 8 a.m. and 4:30 p.m., Monday through Friday.

CHARLES A. COTTON, Commissioner
 LAURA M. DOUGLAS, Secretary
 JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: April 10, 1998

FILED WITH LRC: April 14, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, May 21, 1998 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: All manufacturers, wholesalers, retailers and installing contractors selling water heating devices.

(2) Direct and indirect costs or savings on the: No costs or savings on reporting sales because the statute already requires reporting in all counties; program has been in effect statewide since 1992. This regulation only conforms to the statute.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: No effect on agency; program has been in use and operation pursuant to statute since 1992.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting forms did not change.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue because it deals only with requirements of reporting by sellers of home water heaters to the department.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department continues to use the permit fees to fund the registration and inspection of hot water heaters.

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

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

(b) Kentucky: The hot water heater reporting program is enforced statewide and no economic impact is caused by this amended regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department could have let manufacturers send this information on their own forms; the form chosen was to facilitate reporting and reduce the hassle to sellers.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increase the knowledge of where hot water heaters have been installed without permits so an inspection can be made to assure correct installation and prevent explosions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A lot of hot water heaters would not be installed by licensed plumbers, or inspected as required for public safety.

(c) If detrimental effect would result, explain detrimental effect: Possibility of improper installation; explosion.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The statute requires all sellers of water heating devices to report.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation establishes the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe conveying and the surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or other piping connections to the system.

(4) Cross connections shall be prohibited except as approved by the authority having jurisdiction, and suitable protective devices shall be installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If cross connection control devices are properly installed, they shall create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of

this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three

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(3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers shall provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. These devices shall be manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
	On models without built-in vacuum breakers:
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line

Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprink- ler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood [floor] level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"

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(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Lawn Sprinklers	
			Main Supply Lines Food Cookers Tanks and Vats Commercial Pools	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	N T O X I C
				A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure. Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
			Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	A.S.S.E. No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

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CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard				Acceptable Protection			
	Severe	Moderate	Minor	Air Gap	Backflow	Back siphonage		
					Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump								
	X			X				
B. Outlet to receptacles containing toxic substances								
	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances								
		X		X	X	X	X	X
D. Outlet into domestic water tanks								
			X		Each case treated separately			
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substances	X			X	X		X	X
2. Nontoxic subst.		X		X	X	X	X	X
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than

five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system. If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, or valves. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three and one-half (3 1/2) inch fixture branches shall not be supplied from any one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices, including air chambers or approved mechanical shock absorbers, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold), polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69 or ASTM F-714, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications, cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) produced and labeled as ASTM F-1281, Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) produced and labeled as ASTM F-1282, copper tubing size PE produced and labeled as ASTM D-2737 for water service if installed with compres-

sion couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fittings.

(2) Plastic pipe and fittings shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing insert fittings of brass or copper shall use copper clamping rings.

(4) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications.

(5) Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system.

(6) All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If Chlorinated Poly(vinyl chloride) (CPVC) joints or connections are installed below ground under a house or building, the water distribution system shall be tested to at least 100 psi before backfilling. (Refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water

services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; and

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch [Type M copper in its] piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes.

(1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of Water shall comply with the standards established in 815 KAR 20:070.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: April 13, 1998

FILED WITH LRC: April 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, May 21, 1998 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being

heard at this hearing shall notify this agency in writing by May 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Some cost savings on installations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

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

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: No detrimental effect on the environment will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

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

904 KAR 2:015. 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, 907 KAR 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660 [†-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

ADMINISTRATIVE REGISTER - 2473

(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 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660. [907 KAR 1:004:]

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

- (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 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660. [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. Upon adoption of this administrative regulation the standard shall be \$888 until June 30, 1999:

1. If funds remain available after June 30, 1999, the standard shall remain at \$888; or

2. If funds are not available, the standard shall revert to \$828, plus any applicable cost of living adjustment, after June 30, 1999; [1997, \$818:]

(b) For an eligibility determination for a resident of a family care

home made on or after January 1, 1998, \$633; [1997, \$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; [1997, \$517:]

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; [1997, \$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; [1997, \$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);
- 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

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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 affects and adverse medication reactions with special 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 affects.

(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.

DIETRA PARIS, Interim Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 1, 1998

FILED WITH LRC: April 9, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 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 May 14, 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: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: 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: No requests for a hearing were received as a result of the publication of the Notice of Intent and one written comment was received from the Department for Social Insurance requesting the addition of \$60 per month for the personal care standard until June 30, 1999.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and one written comment was received from the Department for Social Insurance requesting the addition of \$60 per month for the personal care standard until June 30, 1999.

(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, with an additional increase of \$60 per month for the personal care standard until June 30, 1999.

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): Cost of living adjustment: \$400,000, already anticipated in the state budget. The \$2 increase in the per diem for personal care level, effective May 1998, will result in increased costs of \$466,000 for SFY 1998.

2. Continuing costs or savings: Cost of living adjustment: Same as first year. The \$2 increase in per diem for personal care level: \$2.8 million in SFY 1999.

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: No requests for a hearing were received as a result of the publication of the Notice of Intent and one written comment from the Department for Social Insurance adding \$60 per month for the Personal Care Standard until June 30, 1999.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and one written comment from the Department for Social Insurance adding \$60 per month for the Personal Care Standard until June 30, 1999.

(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 supplementa-

tion 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

CABINET FOR FAMILIES AND CHILDREN Department for Social Services Division of Family Services (Amendment)

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

RELATES TO: KRS 199.640-199.670, 605.090, 610.110
STATUTORY AUTHORITY: KRS 194.050(1), 199.641, EO 96-862
NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. Executive Order 96-862, effective July 2, 1996, reorganized [reorganizes] the Cabinet for Human Resources and placed [places] the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation establishes a five (5) [four-(4)] level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the Commissioner or designee of the Department for Social Services.

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

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

(4) "Quality care pilot initiative" means a service-based system of care which allows:

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

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

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

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

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

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

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

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

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

(a) ~~((1))~~ Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall not exceed [be] forty-five (45) dollars per day.

(b) ~~((2))~~ Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall not exceed [be] sixty-five (65) dollars per day.

(c) Level III children may engage in occasional violent acts and may have superficial or fragile interpersonal relationships and require supervision in a structured, supportive environment where level of supervision and support may vary from low to moderate proportional to the child's ability to handle reduced structure. These children may occasionally require intense levels of intervention to maintain the least restrictive environment and require a program which is flexible enough to allow both extended trials of independence when the child is capable and periods of corrective and protective structure during relapse. The rate for Level III shall not exceed \$100 per day.

(d) ~~((3))~~ Level IV ~~[[H]]~~ children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level IV ~~[[H]]~~ shall not exceed [be] \$135 per day.

(e) ~~((4))~~ Level V ~~[[V]]~~ children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level V ~~[[V]]~~ shall not exceed [be] \$180 per day.

(2) The department may establish a quality care pilot initiative in which the per diem rate paid to the provider remains the same throughout the receipt of services regardless of the levels of the service system through which the child progresses. The quality care pilot initiative rate shall be established based on the initial assigned level of care. Upon admission of a child into the pilot the provider shall:

(a) Assign a targeted length of stay based on the clinical assessment of the child and family;

(b) Design and implement individualized treatment plan based on the unique needs of each child and family which enhances the department's permanency plan for the child;

(c) Have the responsibility to decide the range of services provided to each child and family; and

(d) Notify the department and gatekeeper prior to a child being moved within the service system.

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

(1) Assessing each child-caring facility to determine what levels of care are provided;

(2) Evaluating each child referred by the department or currently

in a child-caring facility to determine classification in the appropriate level of care;

(3) Reevaluating each child within six (6) months after placement in a facility, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system;

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level unless the child is in the quality care pilot initiative. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.

(b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made unless the child is in the quality care pilot initiative. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review unless the child is in the quality care pilot initiative. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department.

(d) If the child-caring facility determines a child is beyond the facility's capacity to provide care, or there is new information previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next utilization review;

1. After a redetermination is completed by the gatekeeper, the facility and department shall be notified of the results.

2. If the child-caring facility disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 6 of this administrative regulation.

(4) Monitoring each placement for quality assurance as part of the reevaluation for each child within six (6) months of the placement and every three (3) months thereafter. The gatekeeper shall:

(a) Review the extent to which services provided are in compliance with the child's treatment plan;

(b) Determine if changes in the child's needs are reflected in the child's treatment plan; and

(c) Advise the Division of Licensing and Regulation of discrepancies; and

(5) Maintain [Maintaining] an information system for children served which shall include, but not be limited to:

(a) Placement history;

(b) Facility placement;

(c) Cost of services;

(d) Length of treatment; and

(e) Discharge outcomes.

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

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

(a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services include the evaluation and treatment of emotional disorders, mental illness and substance abuse and are directed to the identification and alleviation of disability or distress, related thereto, experienced by a child which follows specific treatment plans targeted to identified problems; and

(c) Support services which include:

1. The identification of resources needed by a child and the coordination of services provided by a range of agencies or professionals;

2. Services which allow a child to cope with the disability or distress;

3. Services which provide access to improving the educational or vocational status of the child; and

4. Services which provide essential elements of daily living.

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

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

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

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

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

(a) Information regarding the child's adjustment;

(b) Services provided to both the child and family;

(c) Progress made toward returning the child home; and

(d) Future plans for the child.

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

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

(a) Specify the action being disputed;

(b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;

(c) Include documentation the child-caring facility considers relevant to support the dispute; and

(d) Specify alternative determinations or actions that may be taken.

(2) The commissioner shall cause the dispute to be reviewed and evaluated and shall:

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

1. The commissioner shall preside over the informal conference with the child-caring facility.

2. The proceedings shall be recorded.

3. The child-caring facility or an authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.

4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.

5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) Issue a written decision on the dispute, including findings of

fact and conclusions of law, no later than thirty (30) days after the informal conference.

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

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

(a) DSS-114, "Schedule of Payment", edition October 1997 [~~revised July, 1996~~];

(b) DSS-886, "Private Child Care Client Interagency Referral Form", edition [~~revised~~] March 1996;

(c) DSS-886A, "Application for Referral to Private Child Care", edition [~~revised~~] September 1996; [~~and~~]

(d) DSS-1251A, "Child Placement History Log", Edition September 1996; and

(e) "Achenbach Child Behavior Checklist (CBCL)", edition [~~revised~~] January, 1995.

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

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 21, 1998 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify this agency in writing by May 14, 1998. If no notification of intent to attend the hearing is received by that date the hearing may be cancelled. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Judy Trigg, Regulations Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Fax# (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

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

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will affect the cost of living or employment in the areas served as the language will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of the quality care pilot initiative. The quality care pilot initiative allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to

deliver services to families and children in the least restrictive and most cost effective manner. The announced adjusted rates are estimated to reduce the expenditures of the department to providers in the amount of \$3M. The reduction in rates pursuant to KRS 199.641 and 41.110 which prevent the drawing of money from the state treasury unless sufficient appropriations have been made by the Kentucky Legislature, is required for the provision of necessary services for needy children. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will affect the cost of doing business in the areas served as the language creates a new level of care that will better serve the needs of children in the community and reduce the overall costs to the public as it is estimated that 20% of the referrals could be placed at this new level of care. Additionally the administrative regulation will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of the quality care pilot initiative. This quality care pilot initiative allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. The announced adjusted rates are estimated to reduce the expenditures of the department to providers in the amount of \$3M. The reduction in rates pursuant to KRS 199.641 and 41.110 which prevent the drawing of money from the state treasury unless sufficient appropriations have been made by the Kentucky Legislature, is required for the provision of necessary services for needy children. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: There should be minimal additional cost associated with the implementation of the new level of care, but affected entities selected to pilot the quality care pilot initiative will experience additional costs associated with the developing skills and expertise in program areas in which the contractor does not have current experience. Other costs may be incurred in the development of a plan describing continuum of services to be provided, how case management would be provided, show evidence of network services and in the initial start-up costs of the contracts.

2. Second and subsequent years: Second and subsequent year compliance, reporting and paperwork requirements include collecting and reporting of data relating to the period of permanency, instances of re-abuse, changes in level of care, and number of planned and unplanned moves of the child. Other additional second and subsequent year costs may include the development and reporting of standard measures of success, and other measurable outcomes for children in care.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Expenditures for private child care services have increased from 24.8 million in FY'94 to 51.5 million in FY'97 with an estimated expenditure of 53M in FY'98 which has exceeded the budgeted amount for the department each year. In an effort to initiate efforts at containing these costs the department implemented the level of care reimbursement system during May, 1996. Although the effort has not been as successful as projected, the rate of percent of growth in expenditures has been decreased from 50% from FY'94 to FY'96, 37% from FY'96 to FY'97 and a projected less than 5% from FY'97 to FY'98. With this regulation the department will reduce expenditures by \$3 million in the first year with the announced 7.5% rate reduction including 1 million as a result of the establishment of the new level of care. During the first year with the establishment of the quality care pilot initiative some additional costs will be incurred by the department

in developing the rate setting methodology, standards for success or failure, identification of the number of children that could be contracted statewide, review of proposals, and developing training and procedures for contract and DSS staff.

2. Continuing costs or savings: Continuing costs or savings to the department include reduced expenditures from the rate reduction and the new level. Additional savings may result from the quality care pilot initiative in the ensuing years when facilities are actually serving more children, resulting in cost containment which is achieved by contractors accepting a specified case rate based on the level of the child at initial entry into the system. Also children receiving continuum services will be stepped down to lower levels of care more quickly, thus achieving permanency more quickly with success measured in terms of the child remaining at the permanency placement six months after discharge.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include the number of providers implementing the quality care pilot initiative and the number of actual children served by the pilot, the methodology for setting the rates for these contracts, development of additional resources in the community by private child care agencies or other entities (managed health and behavioral health care initiatives and impact plus). Another factor is that the department can not control the number of children entering the system from the court, but will be attempting to monitor the admissions and discharges with increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out of home care.

(b) Reporting and paperwork requirements: With the development of the additional level of care, quality care pilot initiative, increased monitoring of admissions and discharge, and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out of home care the department will have a significant increase in both internal and external reporting of information. There will also be additional paperwork associated with the development of the contracts and some additional staff training.

(4) Assessment of anticipated effect on state and local revenues: The announced adjusted rates are estimated to reduce the expenditures of the department to providers in the amount of \$3M. The reduction in rates pursuant to KRS 199.641 and 41.110 which prevent the drawing of money from the state treasury unless sufficient appropriations have been made by the Kentucky Legislature, is required for the provision of necessary services for needy children. Although there is a 7.5% announced rate reduction for the private child care agencies, there is an increase in the budgeted amount available for these expenditures on the state level. This regulation has as its anticipated effect cost containment and fiscal accountability.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for this administrative regulation is general fund, Title IV-E and Medicaid.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Numerous alternative methods of resolving the departments' budget deficit were considered including numerous levels of reductions that would have contained costs to the actual department's budgeted amount. None of these solutions were in the best interest of the children in care, private providers or the department. Therefore the cabinet decided to bring together a representative group of private child care providers, consultants, and department

staff to solve the current budget crisis, redesign the current system of care in an effort to provide a more appropriate service delivery system for the at-risk children and families and to contain the growth in department expenditures for out of home care. Many alternatives were discussed and some consensus was obtained on the new level of care, and how to maximize the Medicaid eligibility, even so the department for fiscal accountability implemented the rate reduction of 7.5%.

(8) Assessment of expected benefits: Expected benefits of these regulations are that the language will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of the quality care pilot initiative. This quality care pilot initiative allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. Another benefit of this administrative regulation is a potential reduction in the length of stay for children in care and the development of outcome measures that result in greater permanency for children. A public hearing has been scheduled during which public comments may be received.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The effect on the public welfare are the expected benefits for Kentucky's children with a potential reduction in the length of stay for children in care, an increase in the states capacity for out of home care resources and the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out of home care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation would restrict the department's ability for fiscal accountability and for a need to share the risk with private child care providers for the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for continued out of home care.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect of not implementing these regulations would be the lost opportunity to initiate systemic long term changes that will benefit children in out of home care through the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it allows the development of the quality care pilot initiative, implements a new level of care and allows fiscal accountability statewide effective October 1, 1997 and is applicable to all private child care agencies contracting with the Department for Social Services.

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, APRIL 15, 1998

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(New Administrative Regulation)

704 KAR 20:082. Probationary certificate for teachers of children, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of children ages birth to primary age.

Section 1. Definition. "Qualified" teacher means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval identified in 704 KAR 20:084, Section 5.

Section 2. If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary recruitment certificate be issued as provided in this administrative regulation.

(1) A prerequisite for a one (1) year probationary certificate for teaching children, birth to primary age shall be:

(a) A certificate or statement of eligibility in kindergarten or elementary special education; or

(b) A baccalaureate or advanced degree in early childhood education, early childhood special education, or child development.

(2) The applicant shall have enrolled in a preparation program in interdisciplinary early childhood education and shall have completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.

(3) The applicant shall complete twelve (12) clock hours of training as required by the Division of Preschool Programs prior to employment.

(4) The applicant shall complete an additional six (6) clock hours of training required by the Division of Preschool Programs within the first three (3) months of employment.

Section 3. The renewal of the one (1) year probationary certificate for teachers of children birth to primary age shall require recommendation by the approved preparation program that the candidate has made significant progress toward the completion of the interdisciplinary early childhood education certificate, as measured by the teaching standards identified in 704 KAR 20:084.

Section 4. Upon recommendation of an approved teacher education institution, teaching experience performed in a full-time position requiring certification for teachers of children birth to primary age shall be substituted for the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of children birth to primary age under this administrative regulation shall complete the assess-

ment requirements identified in 704 KAR 20:084 for interdisciplinary early childhood education.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, General Counsel

APPROVED BY AGENCY: January 27, 1998

FILED WITH LRC: March 18, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 22, 1998, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 1998, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Interim Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All candidates for this recruitment plan.

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: By statute, the Education Professional Standards Board can establish teacher certification requirements only by regulation.

- (8) Assessment of expected benefits: None
- (a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky:
- (b) State whether a detrimental effect on environment and public health would result if not implemented:
- (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Certification requirements are applied uniformly to all applicants.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Department for Libraries and Archives
(New Administrative Regulation)

725 KAR 2:080. Interstate Library Compact.

RELATES TO: KRS 171.221

STATUTORY AUTHORITY: KRS 171.221

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.221 authorizes the Department for Libraries and Archives to enter into agreements with other states for the purpose of providing cooperative library services. The function of this administrative regulation is to establish such an agreement.

Section 1. "Compact administrator" means the state librarian as designated in KRS 171.130.

Section 2. Incorporation by Reference. (1) "Interstate Library Compact" (1998), is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, telephone: (502) 564-8300, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES A NELSON, State Librarian and Commissioner
 CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 27th day of May, 1998, at 10 a.m. in the Conference Room at the Kentucky Department for Libraries and Archives' Office, 300 Coffee Tree Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 19th day of May, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: 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, (502) 564-8300.

REGULATORY IMPACT ANALYSIS

Agency Contact: James A. Nelson

(1) Type and number of entities affected: Approximately 44 members of the Greater Cincinnati Library Consortium ("GCLC"). GCLC is a cooperative of academic, public, school and special libraries in the Greater Cincinnati/Northern Kentucky area organized to promote library and media services among and through its member 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: No direct or indirect costs or savings on the cost of living and employment in the Northern Kentucky area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business in the Northern Kentucky 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: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional sources of revenue required to be used for implementation and enforcement of 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: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: Northern Kentucky libraries would suffer the loss of services provided through the GCLC.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(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: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all entities are treated uniformly under the law.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(New Administrative Regulation)

815 KAR 8:045. "Limited" licenses for journeyman HVAC mechanics.

RELATES TO: KRS 198B.658, 198B.666

STATUTORY AUTHORITY: KRS 198B.658

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:020, and establishes a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly by allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tiering of administrative regulations.

Section 1. Application for Limited Licenses. Applicants seeking to be licensed as a journeyman mechanic under 815 KAR 8:020, but who chooses to use their experience and career goals to function in a limited capacity, shall comply with the application requirements of 815 KAR 8:020, except that they may request, in writing, and shall be granted a limited license upon proof of experience and examination, as follows:

(1) "Limited" journeyman HVAC duct mechanic - The applicant shall apply for, provide proof of relevant experience of duct work and successfully pass the examination given by Block and Associates known as "Journeyman HVAC Duct Mechanic - KY01".

(2) "Limited" journeyman HVAC installer mechanic - The applicant shall apply for, provide proof of relevant experience of altering and installing and successfully pass the examination given by Block and Associates known as "Journeyman HVAC Installer Mechanic - KY01".

Section 2. Limited Licenses and Responsibilities. (1) A person licensed under the alternative limited licensing provisions of this administrative regulation may work independently within the range of the limited license authorization while under the general supervision of a master HVAC contractor.

(2) A person holding a limited license shall not hold himself out as complying with all the journeyman HVAC mechanic experience and examination requirements of 815 KAR 8:020, and a limited license under this administrative regulation shall not replace the requirement that each master HVAC contractor shall have in his employ at least one (1) journeyman HVAC mechanic whose license is not limited.

(3) A person holding a "limited" license, pursuant to Section 1(1) or (2) of this administrative regulation, shall serve under the general supervision of the master HVAC contractor.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: April 13, 1998

FILED WITH LRC: April 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Thursday, May 21, 1998 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Scope of administrative regulation is limited. Impact indeterminate and estimated to be approximately 20 potential applicants.

(2) Direct and indirect costs or savings on the: This will not alter the cost of living.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

3. Additional factors increasing or decreasing costs:

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

(4) Assessment of anticipated effect on state and local revenues: Insignificant revenue increase from the few extra persons who may qualify each year. No local revenue.

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

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program and this administrative regulation is necessary to treat qualified persons similarly and not to open up the industry to more qualified persons.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public

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health would result if not implemented: Although limited, the detrimental impact would be limited to the number of persons that would not otherwise be licensed.

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is the essence of this regulation because two new categories are created, with different requirements for each.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (New Administrative Regulation)

908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260.

RELATES TO: KRS 194.050, Chapter 210, 222.211, 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.211, 222.231, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050, 222.211, 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 July 2, 1996, 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 repeals existing licensure requirements for nonmedical alcohol treatment centers and drug abuse treatment and education centers. This administrative regulation is necessary to repeal existing regulations that will be replaced by new administrative regulations.

Section 1. The following administrative regulations are hereby repealed: (1) 908 KAR 1:010;

- (2) 908 KAR 1:020; and
- (3) 908 KAR 1:030; and
- (4) 908 KAR 1:040; and
- (5) 908 KAR 1:050; and
- (6) 908 KAR 1:060; and
- (7) 908 KAR 1:070; and
- (8) 908 KAR 1:080; and
- (9) 908 KAR 1:090; and
- (10) 908 KAR 1:100; and
- (11) 908 KAR 1:110; and
- (12) 908 KAR 1:120; and
- (13) 908 KAR 1:130; and
- (14) 908 KAR 1:140; and
- (15) 908 KAR 1:150; and
- (16) 908 KAR 1:160; and
- (17) 908 KAR 1:170; and
- (18) 908 KAR 1:180; and
- (19) 908 KAR 1:190; and
- (20) 908 KAR 1:200; and
- (21) 908 KAR 1:210; and

- (22) 908 KAR 1:220; and
- (23) 908 KAR 1:230; and
- (24) 908 KAR 1:240; and
- (25) 908 KAR 1:250; and
- (26) 908 KAR 1:260.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: April 13, 1998

FILED WITH LRC: April 14, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Thursday, May 21, 1998, at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, May 14, 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 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 listed below: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street- 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: Currently there are approximately 110 agencies licensed as nonmedical alcohol and education (NATE) centers and drug abuse treatment and education (DATE) centers which are affected. These agencies operate 428 facilities and provide services to approximately 55,000 clients per year. All agencies will be affected by the repeal of these existing licensure regulations.

(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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: This regulation repeals the current nonmedical alcohol and education (NATE) center regulations and the drug abuse treatment and education (DATE) center regulations. These regulations were originally written when there was a separate statute governing the promulgation of alcohol treatment and education licensing regulations and a separate statute governing the promulgation of drug abuse treatment and education licensing regulations. When major revisions were made to KRS Chapter 222 in the 1994 legislation, KRS 222.231 was created which provides for a single license to regulate both alcohol and other drug abuse treatment programs. Repealing these regulations allows for the promulgation of the proposed regulation 908 KAR 1:370 which provides for a single set of licensure standards governing both alcohol and other drug

abuse treatment programs. Approval of this repealer regulation will remove the duplication of effort involved in programs applying for both NATE and DATE centers.

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

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: By repealing these regulations and replacing them with a single regulation as proposed in 908 KAR 1:370, there will be some cost savings to the Office of Inspector General, Cabinet for Health Services, which is the administrative body responsible for enforcing this licensure regulation. These cost savings should result from less administrative paperwork because only one (1) license will be issued rather than two (2) separate licenses under the current NATE and DATE center regulations.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There should be a reduction in paperwork because the repeal of these regulations allows for the establishment of one single alcohol and other drug abuse license rather than two (2) separate NATE and DATE center licenses.

(4) Assessment of anticipated effect on state and local revenues: There will be no loss of state revenues related to licensure fees because the regulation 908 KAR 1:370, which is proposed to take the place of the regulations repealed in this regulation 908 KAR 1:311, will continue the same fee requirements.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue will be required to repeal the regulations cited in this regulation 908 KAR 1:311.

(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 regulations will be implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since KRS 222.231 mandates that a single license be issued for alcohol and other drug abuse treatment programs.

(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 repeal of the NATE and DATE center licensure regulations makes way for the establishment of a single set of alcohol and other drug abuse licensure standards. This should improve the quality of services delivered to alcohol and other drug abuse clients because the proposed replacement regulation 908 KAR 1:370 contains standards which reflect state-of-the-art program knowledge. Improving the quality of services provided to clients should decrease the abuse of alcohol and other drugs, thereby improving the health and safety of the citizens of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if these NATE and DATE center regulations are not repealed.

(c) If detrimental effect would result explain detrimental effect: If these regulations are not repealed, the proposed replacement licensure regulation 908 KAR 1:370 will be unable to proceed through the regulatory approval process. This would result in maintaining a separate redundant licensing system for alcohol treatment programs and drug abuse treatment programs, and eliminate the opportunity to update the licensure standards to reflect state-of-the-art program knowledge.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy in conflict.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not used since the repeal of these NATE and DATE center regulations apply equally to all agencies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

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, that those required by the federal mandate? None

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (New Administrative Regulation)

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

RELATES TO: KRS 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.231, EO 96-862

NECESSITY, FUNCTION AND CONFORMITY: KRS 194.050 and 222.231 mandate the Cabinet for Health Services to establish requirements and standards for licensing a person or an agency and approving alcohol and other drug abuse treatment programs. Executive Order 96-862, effective July 2, 1996, 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 which establish minimum standards for a person or an agency operating an alcohol and other drug abuse detoxification, residential, family residential, residential transitional living, outpatient, or intensive outpatient treatment program.

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent college handbook published by the college board.

(2) "Agency" means as defined in KRS 222.005(2).

(3) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(4) "Alcohol and other drug abuse treatment entity" means an agency or a business owned by an individual, which operates one (1) or more of the following alcohol and other drug abuse treatment programs: detoxification, residential, family residential, residential transitional living, outpatient or intensive outpatient.

(5) "Alcohol and other drug free work place" means a set of policies established by an AODE to create a work environment where the unlawful manufacture, distribution, possession, or use of a controlled substance or the use of alcohol is strictly prohibited.

(6) "AODE" means an alcohol and other drug abuse treatment entity.

(7) "Cabinet" means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(8) "Case management" means an activity which brings services, agencies, resources, or people together to take actions toward the

achievement of a client's goals.

(9) "Client" means an individual who receives treatment services in a licensed AODE.

(10) "Client record" means a file containing documentation of client services and other client data.

(11) "Clinical service" means a diagnostic and treatment activity received by a client in a program of a licensed AODE.

(12) "Clinical services supervisor" means an individual responsible for monitoring and directing diagnostic and treatment services and providing consultation and instruction to a clinician and case manager to ensure he is engaged in sound clinical practice.

(13) "Clinician" means an individual who has assigned alcohol and other drug abuse client cases, conducts clinical assessments, is responsible for developing and implementing an alcohol and other drug abuse client's treatment plan, and leads counseling sessions.

(14) "Confirmatory drug or alcohol screening test" means a follow-up test utilizing a second independent chemical methodology.

(15) "Controlled substance" means as defined in KRS Chapter 218A.

(16) "Counseling" means a relationship where a clinical staff person helps a client mobilize resources to resolve problems and modify attitudes and behavior.

(17) "Courtney Disposition System" means a statewide database, maintained by the Kentucky Administrative Office of the Courts, containing all criminal conviction data involving both state and local law enforcement agencies in Kentucky.

(18) "Daily living skills" means budgeting, meal planning, shopping, personnel hygiene, housekeeping and using public transportation.

(19) "Detoxification program" means a supervised nonmedical withdrawal from an alcohol or other drug induced intoxication and an assessment of a client's need for further care resulting in referrals to appropriate resources.

(20) "Diagnosis" means a condition listed in the current Diagnostic and Statistical Manual, which is a desk reference for determining physical and mental conditions based on a set of signs and symptoms.

(21) "Diagnostic impression" means a preliminary determination of a diagnosis made prior to the completion of a treatment plan.

(22) "Diagnostic summary" means a written analysis of client assessment information for the purpose of identifying patterns of behavior and prioritizing problems to be addressed in treatment.

(23) "Division" means the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.

(24) "Emergency procedures" means crisis intervention, cardiopulmonary resuscitation, and standard first aid.

(25) "Facility" means the physical area where a treatment program is operated by an agency.

(26) "Family residential treatment program" means an organized intensive set of therapeutic activities provided in an environment where the client resides twenty-four (24) hours a day with his children.

(27) "Federally-assisted" means as defined in 908 KAR 1:320.

(28) "Governing authority" means the person or agency in which the ultimate responsibility and authority for the operation of the AODE is vested.

(29) "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.

(30) "Intake" means an administrative and initial assessment procedure completed at the time of a client's admission to a program.

(31) "Intensive outpatient treatment program" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intensive basis.

(32) "Outpatient treatment program" means individual and group

therapeutic activities, assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.

(33) "Presumptive drug or alcohol screening test" means testing through the use of a chemical screening methodology for the presence of drugs or alcohol in a urine or blood sample.

(34) "Primary responsibility" means having the main obligation for ensuring that a child's needs are met regarding food, clothing, hygiene, safety, discipline, supervision and follow-up on a referral to a community resource.

(35) "Program" means as defined in KRS 222.005(10).

(36) "Recovery" means rehabilitation from alcohol or other drug abuse.

(37) "Registered dietitian" means an individual registered with the American Dietetic Association.

(38) "Relapse prevention plan" means a written assessment of potential triggers which may cause a client to use alcohol or other drugs and the identification of therapeutic activities and strategies focused on eliminating the potential triggers.

(39) "Residential transitional living program" means a therapeutic group setting, where a client resides twenty-four (24) hours a day, and makes a social and vocational adjustment prior to returning to family or independent living in the community.

(40) "Residential treatment program" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.

(41) "Screening" means the preliminary process used to identify a client's needs to determine if the client is eligible for admission to a particular program or is in need of a particular service.

(42) "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, where support and direction in achieving or maintaining an alcohol and drug free life style or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.

(43) "Service" means a therapeutic activity provided in a program to meet a client's rehabilitation needs as they relate to the use of alcohol or other drugs.

(44) "Special dietary requirements" means a diet required by a physician's prescription or for a client's religious or ethical reasons.

(45) "Substantial health risk" means a condition which creates a significant risk of death or which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any organ of the body.

(46) "Treatment" means as defined in KRS 222.005(13).

(47) "Withdrawal" means the physiological readjustment of the body after an individual stops using alcohol or other drugs.

Section 2. Licensing Requirements. (1) An AODE shall not operate without first obtaining a license from the cabinet for each facility unless exempted under KRS 222.003(1) and 222.231(1). An AODE operating without obtaining a license for each facility from the cabinet shall be subject to the penalties stated in KRS 222.990(2).

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, an individual owner of a business who provides alcohol and other drug abuse treatment services pursuant to Kentucky Revised Statutes governing the practice of psychology, social work, medicine, psychiatric nursing, marriage and family therapy, professional counseling, alcohol and drug counseling and art therapy is not required to obtain an AODE license.

(3) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Utilizing a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet;

and

(d) Conducting treatment services separate from another AODE located at the same location.

(4) The license shall be conspicuously posted in a public area of each facility and shall specify which programs are approved for operation and the date the license expires.

(5) The cabinet shall make available to the public upon request, a list of licensed AODEs, showing the location of each facility and the type of program operated at each facility. The cabinet may issue revisions and corrections to this list as changes occur.

(6) Application for a license. An application for licensure or relicensure shall be obtained from and submitted to the cabinet and shall include:

- (a) The AODE name, owner and mailing address;
- (b) Facility address and phone number;
- (c) Type of programs to be operated at each facility; and
- (d) Hours of operation.

(7) An application for licensure shall be accompanied by a fee of \$155 for each facility.

(8) An application for relicensure shall be accompanied by a fee of eighty (80) dollars for each facility.

(9) An application for licensure or relicensure shall be processed according to the following:

(a) The cabinet may conduct an unannounced on-site inspection of any facility;

(b) An AODE shall provide the cabinet access to each facility and to documents needed to complete an inspection during normal business hours;

(c) The cabinet shall notify an AODE in writing of the violation of a licensure standard identified during an inspection; and

(d) An AODE shall within ten (10) calendar days from receipt of the notice of violation, submit to the cabinet a written plan of correction specifying the corrective action to be taken and the date when each violation shall be corrected.

(10) The cabinet shall issue a license to the owner of the AODE named in the application and the license shall be effective on the date on which approval is granted by the cabinet.

(11) Change in AODE status.

(a) Name change.

1. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. An AODE shall submit a processing fee of twenty-five (25) dollars to the cabinet.

3. The cabinet may issue a new license for the remainder of the licensure period.

(b) Change of location. An AODE shall not operate a program 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 an AODE shall submit to the cabinet an application for licensure accompanied by a fee of \$155 for each facility within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

(12) Denial of a license. If an AODE fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the cabinet may deny the application for licensure or relicensure.

(13) Negative licensure actions.

(a) Complaints. If a complaint is received by the cabinet, the cabinet may conduct an unannounced on-site inspection to determine if a violation of a licensure standard has occurred. An inspection shall be conducted in accordance with subsection (8)(b), (c) and (d) of this section.

(b) Revocation of a license. If an AODE fails to submit to the cabinet an acceptable plan of correction, the cabinet may revoke a license.

(c) Immediate revocation of a license. The cabinet shall immediately revoke a license in the case of immediate danger.

Section 3. Appeals. (1) If the cabinet takes action to deny, revoke or immediately revoke an AODE license, the cabinet shall notify an AODE in writing stating a reason for the adverse action and the AODE's right to appeal in accordance with KRS 222.231(6).

(2) An AODE may appeal a negative action by the cabinet in writing to the Secretary, Cabinet for Health Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days from the date of the notice of action from the cabinet.

(3) Upon receipt of an appeal, the secretary, or his designee, shall notify the AODE in writing within fifteen (15) calendar days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) A hearing officer shall have authority to issue a subpoena to compel the attendance of a witness and the production of a document to be used as evidence in a hearing held pursuant to this section.

(5) Based upon the record and upon the information obtained at the hearing, a hearing officer shall affirm or overturn the initial decision of a negative action. A decision of the hearing officer shall be final. An AODE shall be notified in writing by the secretary, or his designee, of the decision of the hearing officer.

(6) Immediate revocation. If an AODE's license is immediately revoked pursuant to Section 2(12)(c) of this administrative regulation, and the AODE requests a hearing, the cabinet shall conduct a hearing within five (5) working days of the cabinet's receipt of a request from the AODE. A hearing may be continued at the request of an AODE.

(a) The sole issue of the hearing shall be whether one (1) or more of the grounds for immediate revocation is immediate danger.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, or if a hearing officer overturns the cabinet's negative action, an AODE shall have its license returned and be allowed to operate and continue the appeals process in accordance with subsections (1), (2), (3), (4) and (5) of this section.

(c) If a hearing officer decides within five (5) working days of the hearing that one (1) or more grounds for immediate revocation, is immediate danger, the action by the cabinet to immediately revoke the AODE's license shall be upheld pending action by the cabinet to accept a plan of correction or to permanently revoke the license.

(7) An AODE that continues to operate after a closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet as provided by law.

Section 4. Physical Plant. (1) An AODE shall ensure and maintain documentation on-site that a facility is in compliance with building, fire, safety, and health standards specified by federal, state and local laws and regulations.

(2) An AODE shall ensure that a facility is in compliance with the Americans with Disabilities Act, 42 USC 12101 et seq.

(3) A facility including the equipment shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors.

(4) A facility shall be kept free from insects and rodents with their harborages eliminated.

(5) A facility shall have a private area where others will not be able to hear the content of a conversation during the delivery of a service.

(6) Outpatient setting. In addition to the standards specified in subsections (1), (2), (3) and (4) of this section, a program including counseling and education services in an outpatient setting shall provide at least twenty (20) square feet of space for each client while receiving a service.

(7) Twenty-four (24) hour setting. In addition to the standards

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specified in subsections (1), (2), (3) and (4) of this section, a treatment program conducted at a facility which provides twenty-four (24) hour care shall meet the following additional requirements:

(a) There shall be at least 120 square feet of space for each client residing in the facility;

(b) There shall be at least one (1) toilet, one (1) sink, and one (1) shower or tub per eight (8) clients;

(c) There shall be a bed with clean bedding which includes sheets, pillowcase, blanket, and a pillow for each client;

(d) There shall be adequate lighting, heating, heated water and ventilation;

(e) There shall be space for a client to store personal belongings including a receptacle where personal property may be stored and locked.

(f) There shall be an area provided for the following activities:

1. Sleeping;
2. Dining;
3. Bathing and toileting;
4. Lounge;
5. Laundry;
6. Visiting;
7. Recreation;
8. Private consultation; and
9. Telephone.

Section 5. Organization and Administration. (1) There shall be a governing authority with overall responsibility for the management and operation of an AODE.

(2) A governing authority shall:

(a) Be responsible for the direction of an AODE by establishing written policies and procedures for the operation of the AODE;

(b) Develop a mission statement outlining an AODE's purpose;

(c) Identify an administrator who shall be principally responsible for the day-to-day operation of an AODE;

(d) Develop an administrative structure and establish a line of authority for each program which shall be documented on an organizational chart except when there is only one (1) individual working in the AODE;

(e) Develop a policy to establish an approved fee schedule, to abide by the fee schedule, to maintain financial records regarding the assessment and payment of client fees, and to provide a receipt for all client services delivered;

(f) Maintain on file documentation that an AODE has obtained professional liability insurance in the minimum amount of \$100,000 per occurrence;

(g) Ensure that an AODE's policies and procedures are available to all personnel; and

(h) Document that an AODE's policies and procedures are reviewed and revised as needed every two (2) years.

Section 6. Personnel Policies. (1) An AODE shall develop written policies and procedures governing personnel and employment practices.

(2) There shall be a written job description for each position stating qualifications, duties, reporting supervisor and positions supervised.

(3) There shall be evidence that all personnel are qualified for their position through documentation of education, work experience, and professional licensure, certification or registration.

(4) Policies shall be developed for:

(a) Maintaining an alcohol and other drug free work place including an action to be taken if any personnel:

1. Are convicted of the unlawful manufacture, distribution, dispensation, possession or use of alcohol or a controlled substance; or

2. Uses alcohol or an illegal controlled substance while on the grounds of the AODE or if performing AODE business;

(b) Ensuring that all personnel engage in ethical practices in the delivery of a client service including a requirement that a clinician sign a code of ethics developed by the division; and

(c) Prohibiting a conflict of interest resulting from a sexual, financial, or other activity between a client and any personnel, which is adverse or exploitative to the client.

(5) A criminal background check shall be obtained by an AODE from the Administrative Office of the Court's Courtnet Disposition System on an administrator and on a clinician.

(6) An administrator or a clinician shall not be allowed to work in an AODE within two (2) years from the date of his release from incarceration, or probation or parole, for a felony conviction.

(7) An individual who has had a criminal conviction for the neglect, physical abuse, sexual abuse or sexual exploitation of a child or for endangering the welfare of a child shall not be allowed to work with a juvenile client.

(8) An administrator or a clinician shall not be allowed to work in the AODE if while working in the AODE he is convicted of a felony.

(9) A separate personnel record shall be maintained for each individual working in the AODE and shall contain:

(a) Job description;

(b) Documentation of education, work experience, and any professional licensure, certification or registration required for performance of the assigned job duties;

(c) Documentation of the criminal background check for an administrator or a clinician;

(d) A clinician's signed code of ethics in accordance with subsection (4)(b) of this section; and

(e) A written summary of each training event completed by AODE personnel, to include the length of the training event in clock hours.

(10) There shall be written policies and procedures governing the use and supervision of volunteers and student interns in the AODE.

Section 7. Quality Assurance. (1) An AODE shall have written policies and procedures to ensure that quality services are delivered and that the health and safety of the client population is protected while receiving a service.

(2) The policies and procedures shall establish a system for client case review to include:

(a) An annual review of client cases to determine if an appropriate decision was made by a clinician regarding a client's diagnosis, admission, treatment plan, progress in relation to the treatment plan and termination;

(b) A system of peer review to ensure a clinician shall not review his own client cases and requiring that a reviewer meets the qualifications for a clinical services supervisor in accordance with Section 8(2) of this administrative regulation;

(c) A system for determining the number of open and closed cases to be reviewed annually and the method of case selection;

(d) A written record of each case review stating if the review is satisfactory or deficient, the corrective action to be taken, and the time frame for taking the action;

(e) The requirement for submitting the results of a written case review to a clinician, clinical services supervisor and an individual in the AODE responsible for managing the case review process; and

(f) Designating an individual responsible for managing a case review process, maintaining documentation of written case reviews, and following up to ensure that a corrective action is taken within the required time frame.

(3) The policies and procedures shall establish a system for responding to an accident or injury requiring hospitalization or resulting in death, and an incident involving fire damage, natural disaster or a threat to security that substantially interrupts the delivery of services which shall include:

(a) Documenting an incident or accident in an AODE incident file; and

(b) Reporting an incident or accident to the individual who is

responsible for the day to day operation of an AODE and to an outside agency according to the following:

1. An incident of child abuse or neglect in accordance with KRS 620.030; and

2. An incident of adult abuse or neglect in accordance with KRS 209.030.

(4) The policies and procedures shall establish an infection control system which shall include:

(a) A procedure for reporting, evaluating, and maintaining a record of an incident of infection in a client or any personnel which poses a substantial health risk to another person;

(b) Designating an individual within an AODE responsible for taking corrective action; and

(c) Orientation for all new personnel and annual in-service training for all personnel on infection control procedures and on specific information related to infections prevalent among alcohol and other drug abusers.

(5) The policies and procedures shall establish an emergency plan for responding to a disaster including fire and severe weather, which shall include the following requirements:

(a) An emergency plan shall be conspicuously posted in a public area of each facility;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) An AODE shall provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) An AODE shall conduct a fire drill in accordance with 815 KAR 10:050.

Section 8. Clinical Staff Requirements. (1) An AODE shall ensure that all personnel receive training which enables them to carry out their job duties, either through AODE sponsored in-service training or through an outside source. A clinician shall complete eight (8) clock hours of alcohol and drug abuse training annually.

(2) An AODE shall designate a clinical services supervisor with overall responsibility for treatment services who meets the following requirements:

(a) Has two (2) years full-time clinical work experience post certification or post degree and the qualifications for a clinician in subsection (4)(b) or (c) of this section; and

(b) Successfully completes a division approved training in clinical services supervision within one (1) year from the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for clinical supervision with the AODE, whichever is later.

(3) A clinical services supervisor shall sign a document stating he will not supervise his spouse, spousal partner, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law.

(4) A clinician shall be one (1) of the following:

(a) A clinical services supervisor in accordance with subsection (2) of this section;

(b) A certified alcohol and drug pursuant to KRS 309.080 to 309.089. An academic degree required for certification pursuant to KRS 309.080 to 309.089 shall be from an accredited college or university;

(c) An individual with an academic degree from an accredited college or university who completed eighty (80) clock hours of alcohol and other drug abuse training, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE or within two (2) years immediately after assuming responsibility as a clinician in the AODE, and is one (1) of the following:

1. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the

United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

5. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist in accordance with KRS 319.064;

6. Licensed social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.100;

7. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work in accordance with KRS 335.100;

8. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a master's degree in psychiatric nursing from an accredited college or university;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, under the supervision of an independent practitioner and with one (1) of the following combinations of education and work experience:

a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

b. Diploma graduate in nursing from a three (3) year program and two (2) years clinical work experience in the substance abuse or mental health field; or

c. Associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

10. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335; or

11. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

(d) An individual with a bachelor's degree from an accredited college or university shall work under the supervision of a clinical services supervisor, who meets the requirements in subsection (2) of this section, according to the following:

1. Completes twenty (20) clock hours of training in alcohol and other drug abuse annually;

2. Receives daily supervision and one (1) hour of face-to-face case consultation weekly;

3. Has all treatment plans cosigned by the clinical services supervisor;

4. Has all progress notes cosigned by the clinical services supervisor during the first three (3) months of employment with an AODE; and

5. Continues to receive training and supervision in accordance with subparagraphs 1, 2 and 3 of this paragraph, unless the individual achieves the requirements in paragraphs (b) and (c) of this subsection.

(5) An AODE shall ensure that a clinician is the only individual who is assigned client cases and who performs the following:

(a) A clinical assessment;

(b) Development and implementation of a client's treatment plan; and

(c) Leads a counseling session.

(6) An individual who provides case management shall:

(a) Meet the requirements for a clinician in accordance with subsection (4) of this section; and

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(b) Successfully complete a division-approved training in alcohol and other drug abuse case management within one (1) year of the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for case management services with the AODE, whichever is later.

(7) A clinical services supervisor shall develop and update annually, a written individual plan of supervision for a clinician or case manager under his supervision, which shall be based on the individual's level of skill, and shall include:

(a) Name of the clinical services supervisor and clinician or case manager;

(b) Clinician or case manager's clinical strengths and weaknesses;

(c) Goals and objectives to increase clinical competency;

(d) Length and frequency of a supervisory session; and

(e) A dated signature of the clinical services supervisor and clinician or case manager agreeing to the individual plan of supervision.

(8) A clinical services supervisor shall maintain, for a clinician or case manager he supervises, documentation of the following:

(a) A signed plan of supervision; and

(b) A record of a supervisory session to include the date, length of the session and content of the supervision.

Section 9. Client Rights. (1) An AODE shall have written policies and procedures to ensure that the rights of a client are protected while participating in a treatment program.

(2) An AODE shall conspicuously post in a public area of each facility a notice of client rights, which shall include the address and telephone number of the AODE's and cabinet's ombudsperson. When there is only one (1) individual working in the AODE, a notice of client rights shall include only the address and telephone number of the cabinet's ombudsperson.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During a program's intake procedures, a client shall sign a client rights statement, which shall be placed in the client's record, and shall specify a client has the right to:

(a) Give informed consent to receive treatment.

1. An adult shall sign an informed consent to receive treatment.

2. A juvenile, or the parent or guardian of a juvenile, shall sign an informed consent for a juvenile to receive treatment in accordance with KRS 222.441;

(b) Have input into his treatment plan and be informed of its content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding his treatment;

(e) Give informed written consent regarding participation in a research study with the exception of a juvenile whose parent or guardian shall give informed written consent;

(f) Confidential treatment according to the following:

1. A federally-assisted agency in accordance with 908 KAR 1:320; and

2. A nonfederally-assisted agency in accordance with KRS 222.271(1);

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his client record in accordance with AODE policy; and

(k) Receive one (1) free copy of his client record in accordance with KRS 422.317.

(5) A residential program shall also specify on the client rights statement that a client has the right to:

(a) Vote in a political election;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(6) If exercising a client right is contraindicated by a client's physical or mental condition, there shall be documentation in a client record of the reason for the restriction and of the explanation given to a client.

Section 10. Program Operations. (1) An AODE shall have a written description for a program which shall include:

(a) Philosophy, mission statement, goals and objectives;

(b) Client population served including age groups and services provided;

(c) Staffing patterns outlined on an organizational chart showing job positions, titles, and a line of authority except when there is only one (1) individual working in the AODE;

(d) Admission and readmission criteria;

(e) Intake procedure;

(f) Discharge and transfer criteria and procedures; and

(g) Procedure for making a referral within or outside an AODE including a list of agencies having a written referral agreement with the AODE.

(2) An AODE shall have the following written policies and procedures regarding referral arrangements made for a client when a special need is identified in his treatment plan:

(a) Any client responsibilities for payment of services;

(b) Referral arrangements shall be documented in the client record; and

(c) When a client has a special need for one (1) of the following services, the AODE shall either provide the service directly or through referral. The service shall be delivered by an appropriately licensed, certified or accredited provider.

1. Physical health services including tuberculosis skin testing, human immunodeficiency virus testing and counseling, prenatal care, dental care, physical examination and other primary care services.

2. Mental health, mental retardation and developmental disability services.

3. Emergency medical services including a written agreement with outside medical resources and notification of the emergency contact person on a client's admission application.

4. Visual, speech or hearing disability services including auxiliary aids which make communication accessible to the client in accordance with the Americans with Disabilities Act, 42 USC 12101 et seq.

5. Primary, secondary, and special education in accordance with state and local laws and regulations.

6. Preparation for a general education development equivalency certificate or other adult education.

7. Vocational rehabilitation.

8. Services to an individual convicted of driving under the influence in accordance with 908 KAR 1:310.

9. Training in daily living skills.

10. Case management services to include:

a. The development of a written case management plan signed by a client which includes an assessment of a client's need for a service, identification of community resources and strategies for obtaining a service; and

b. Assignment of a case manager who shall be responsible for assisting a client in obtaining a community service, monitoring a client's progress and advocating on behalf of a client to obtain a service or to promote the development of a service.

(3) An AODE shall have written policies and procedures for services to juveniles which include the following:

(a) Services and educational materials shall be age appropriate; and

(b) With the written consent of a juvenile, the family shall be involved in a juvenile's treatment, and documentation of an attempt

to involve the family shall be included in a client record.

(4) An AODE shall ensure that a clinical service is delivered in a private area, where others who are not participating in the service, will be unable to hear the content of a conversation during the delivery of a service.

(5) An AODE shall have a uniform client record system for a program which shall include the following requirements:

(a) A separate legible written or electronic record shall be maintained for a client and shall be:

1. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

2. Retained until age twenty-one (21) for a client who received a service under age eighteen (18), or for five (5) years from the last date of a service, whichever is longer;

3. Stored in a locked cabinet and accessible only to authorized personnel; and

4. Kept confidential according to the following:

a. A federally-assisted agency in accordance with 908 KAR 1:320; and

b. A nonfederally-assisted agency in accordance with KRS 222.271(1);

(b) A client record shall include:

1. Application for admission;

2. Psychosocial assessment, health status questionnaire or a copy of a physical health examination. A detoxification program is exempt from this standard;

3. Supplemental assessment and evaluation when available;

4. Consent to treatment, fee agreement, and client rights statement, each signed by a client;

5. Treatment plan or in a detoxification program either a treatment plan or a treatment plan protocol;

6. Case management plan signed by a client. A detoxification program is exempt from this standard;

7. Aftercare plan signed by a client. A detoxification program and an outpatient treatment program are exempt from this standard;

8. Progress notes;

9. Report from an outside agency or an individual when available;

10. Authorization for release of information signed by a client, according to the following:

a. A federally-assisted agency in accordance with 908 KAR 1:320; and

b. A nonfederally-assisted agency in accordance with KRS 222.271(1); and

11. Discharge summary;

(c) An entry in a client record shall include a signature and credential of the individual who delivered a service and the date a service was provided; and

(d) Procedure for destroying a client record after the required period of retention to include:

1. A written record shall be burned or shredded; and

2. An electronic record shall be destroyed according to the following:

a. An AODE shall designate an individual as a computer security administrator who shall approve the destruction of electronic data to ensure the information has been deleted and is unrecoverable;

b. Information shall be deleted from magnetic media by complete degaussing, electronic overwriting, or physical destruction by shredding; and

c. Magnetic media which has been through a deletion process, with the exception of physical destruction by shredding, shall be tested periodically to validate the continued effectiveness of the deletion.

(6) An AODE shall have a written client grievance procedure to include the following requirements:

(a) Identification of an AODE ombudsperson;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding

to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal;

(e) Conspicuously posting in a public area of a facility a notice informing a client of:

1. A right to file a grievance;

2. A process for filing a grievance; and

3. An address and telephone number of the AODE's and cabinet's ombudsperson;

(f) An AODE ombudsperson shall document a grievance in a central AODE client grievance file; and

(g) An AODE ombudsperson shall refer a grievance regarding an allegation of abuse or neglect to an appropriate authority in accordance with:

1. KRS 209.030 regarding the abuse or neglect of an adult; and

2. KRS 620.030 regarding the abuse or neglect of a child.

(7) An AODE shall have a written policy regarding client fees to include:

(a) A fee schedule shall be conspicuously posted in a public area of a facility; and

(b) There shall be a policy for setting and collecting client fees.

(8) If an AODE requires a client to be screened for the presence of alcohol or other drugs there shall be written policies and procedures regarding the taking and testing of a blood and urine sample, chain of custody, confidentiality of a sample and a result, and any consequences if a client tests positive.

(9) An AODE shall have a written policy governing the use of alcohol and other drugs by a client, or a visitor while in the program.

Section 11. Detoxification Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in a detoxification program.

(1) At admission, a client shall receive an assessment in accordance with an assessment protocol, developed in consultation with a physician, and documented in a client record to determine if a client is intoxicated or in withdrawal, the severity of a client's physical and mental condition, and a need for emergency medical care.

(2) Within twenty-four (24) hours of admission, the following information shall be obtained from a client and documented in a client record:

(a) Client identifying and demographic information;

(b) Emergency contact person;

(c) Presenting problem;

(d) History of alcohol and other drug use including problems and previous treatment related to the abuse of alcohol and other drugs;

(e) History and previous treatment for a physical problem including delirium tremens, seizures, heart disease, liver disease, and infectious disease including tuberculosis, hepatitis, and human immunodeficiency virus;

(f) History and previous treatment for a mental health problem, mental retardation, and a developmental disability;

(g) Assessment of pregnancy status based on a client's self-report or a pregnancy test; and

(h) Signed consent to treatment.

(3) A reason for not obtaining the information in subsection (2) of this section, within twenty-four (24) hours, shall be documented in a client record.

(4) A written treatment plan based on the assessment shall be completed for a client within forty-eight (48) hours of admission, revised as new information is received, documented in a client record and include:

(a) Presenting problem;

(b) Identification of a client problem;

(c) Type of service to be provided including a referral within or outside the AODE;

(d) Criteria for discharge;

(e) Staff person primarily responsible for coordinating a client's

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care; and

(f) Documentation that a treatment plan has been explained to a client and the extent to which a client agrees with the plan.

(5) A treatment plan protocol may be used in place of an individualized treatment plan and any exception to the protocol shall be documented in a client record.

(6) A progress note shall:

(a) Be recorded in a client record following the delivery of a professional service; and

(b) Include a service provided, an observation of the client's behavior and response to a service, and a client's progress toward meeting the goals and objectives of a treatment plan.

(7) A discharge plan shall be developed with a client, documented in a client record, and include a referral to:

(a) Alcohol and other drug abuse treatment at an appropriate level of care;

(b) A self-help group specific to addiction recovery; and

(c) A community service which may include housing, medical, and social services needed by the client.

(8) A discharge summary shall be completed within thirty (30) calendar days of discharge, documented in a client record, and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Summary of treatment and response to treatment; and

(d) Referral made to another organization or provider.

(9) The pulse, temperature, and blood pressure of a client shall be monitored three (3) times daily in accordance with an AODE protocol, developed in consultation with a physician and documented in a client record.

(10) A client shall receive daily counseling, education, and orientation to self-help groups specific to addiction recovery, as soon as he is physically and mentally capable, with a primary focus on motivating a client to continue in treatment after discharge.

(11) A client shall be provided an opportunity to meet with a self-help group and other outside service providers as soon as he is physically and mentally capable.

(12) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which shall require physician approval prior to use by a client;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with a treatment plan, and the verification shall be documented in a client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall only be available to a client at the time it is scheduled to be taken according to a prescription or as directed on a label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of a staff person who monitored the self-administration of a medication.

(13) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be

documented in a client record;

(d) A client shall receive three (3) meals daily with no more than a fifteen (15) hour span between an evening meal and breakfast; and

(e) Snacks shall be provided.

(14) Staffing.

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and an AODE shall ensure that staff include:

1. A program manager, supervisor or coordinator;

2. At least two (2) staff per shift with one (1) trained in emergency procedures; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered.

(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.

(15) Training shall be provided according to the following:

(a) Within three (3) months of the date of employment, a staff person shall be trained in:

1. Monitoring the vital signs of pulse, temperature, and blood pressure;

2. Crisis intervention;

3. Cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7; and

4. Standard first aid conducted by an instructor certified by the American Red Cross; and

(b) Within one (1) year of the date of employment a staff person shall be trained in:

1. The recognition of a problem associated with alcohol and other drug use; a symptom requiring referral for emergency care; degree of intoxication; the stages of withdrawal; and a physical or mental complication that may occur at each stage;

2. Techniques for motivating a client to continue in treatment after discharge;

3. Local and state resources including a procedure for making a client referral; and

4. Effects of alcohol and other drug use on a pregnant woman and her fetus including special detoxification needs during pregnancy, and recognition of when to refer a pregnant client for medical detoxification.

Section 12. Residential Treatment Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for a residential treatment program.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and partner relationship where indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

- k. Ethnic and cultural background;
- l. Leisure and recreational activities;
- m. Client strengths and limitations; and
- n. Diagnostic impression;
- 2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;
- 3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:
 - a. Review of body systems;
 - b. Surgery and treatment history;
 - c. Current medical condition;
 - d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;
 - e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;
 - f. Prescription and over-the-counter medication;
 - g. Allergies including an allergic reaction to a medication; and
 - h. Identification of a medical condition that may affect a client's participation in treatment;
- 4. Information from a written report regarding a previous assessment and treatment if available; and
- 5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;
- (b) Treatment planning which includes:
 - 1. A written individualized treatment plan based on an assessment shall be developed for a client within six (6) calendar days of admission and shall include:
 - a. Diagnosis;
 - b. Identification of a client's problem;
 - c. Goals, measurable objectives and criteria for discharge;
 - d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;
 - e. Staff person primarily responsible for implementing a treatment plan; and
 - f. Date for treatment plan review;
 - 2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and
 - 3. Case review of a treatment plan and a client's progress shall be conducted every two (2) weeks and documented in a client record;
 - (c) Alcohol and other drug abuse counseling shall be provided according to the following:
 - 1. There shall be a focus on problems related to alcohol and other drug abuse;
 - 2. There shall be individual counseling, group counseling, or family counseling; and
 - 3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;
 - (d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with a client's treatment plan;
 - (e) Orientation to self-help groups specific to addiction recovery;
 - (f) A variety of organized recreational activities which shall be under the direction of staff and part of a client's schedule;
 - (g) Relapse prevention which includes:
 - 1. A written relapse prevention plan shall be developed for a client who completes treatment; and
 - 2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and
 - (h) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.

(3) A client shall have access to films, printed materials, and audio and video tapes related to the treatment of alcohol and other drug abuse and recovery from alcoholism and other drug dependencies.

(4) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other and if a service is requested it shall be provided either directly by an AODE or through referral to a qualified outside provider.

(5) A client shall receive forty (40) hours of structured activities weekly which include alcohol and other drug abuse education; individual, group or family counseling; self-help group meetings specific to addiction recovery; and recreation. Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(6) A progress note shall be recorded:

(a) Following the delivery of an individual counseling session and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection. A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan.

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Diagnosis;

(d) Summary of treatment and response to treatment; and

(e) Referral made to another organization or provider.

(8) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(9) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(10) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which shall require physician approval prior to use by a client;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection, is not contraindicated with a treatment plan, and the verification shall be documented in a client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall only be available to a client at the time it is scheduled to be taken according to a prescription or as directed on a label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of a staff person who monitored the self-administration of a medication.

(11) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietitian;

(c) A client involved in preparing meals shall be monitored by a

staff person and there shall be documentation that a client receives orientation in health and safety issues related to food preparation;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record;

(e) A client shall receive three (3) meals daily with no more than a fifteen (15) hour span between an evening meal and breakfast; and

(f) Snacks shall be available.

(12) Staffing.

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and an AODE shall ensure that staff include:

1. A program manager, supervisor or coordinator;

2. At least one (1) staff person trained in emergency procedures per shift; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered.

(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(13) Within three (3) months of the date of employment, a staff person shall be trained in crisis intervention, cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7, and standard first aid conducted by an instructor certified by the American Red Cross.

Section 13. Family Residential Treatment Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for a family residential treatment program.

(1) A family residential treatment program shall meet the standards for a residential treatment program in Section 12 of this administrative regulation.

(2) A client with a need identified in a treatment plan shall receive training on parenting.

(3) An AODE shall have written policies on children to include:

(a) Maximum number of children who are permitted to reside in the facility at one (1) time;

(b) Age of children who are permitted to reside in the facility;

(c) A client's responsibility for his children to include:

1. A client shall have primary responsibility for the children who reside with him in the facility; and

2. A client shall make prior arrangements for the care of his children in the event he leaves the facility without his children, with or without staff approval;

(d) A client shall sign a statement agreeing to the policies in paragraph (c) of this subsection and the statement shall be included in a client's record;

(e) An AODE shall contact the Cabinet for Families and Children, if an individual designated by a client as responsible for the care of his children in his absence, is not located; and

(f) A client shall have access to milk and baby formula for his children at all times.

(4) A client's children shall receive the following services:

(a) A physical health, mental health, mental retardation and developmental disability screening to determine the need for a referral to an outside qualified provider;

(b) A written case management plan, which shall be developed within six (6) calendar days of admission and include:

1. Identified need for a service;

2. Identification of community resources;

3. Strategies for obtaining a service;

4. Name of a case manager who shall be responsible for assisting a parent in obtaining a community service for his child; and

5. Signature of the parent residing with the child in the facility;

(c) Education about the effect on a family and children when a parent or a parent's partner abuses alcohol or other drugs;

(d) A variety of organized recreational activities which shall be under the direction of staff and posted on a schedule;

(e) Child care in a program licensed by the cabinet if a need is identified; and

(f) Primary, secondary or special education in accordance with state and local laws and regulations if a need is identified.

(5) An AODE shall maintain a separate record for a client and for each child residing with a client in a facility.

(6) In addition to the staff requirements in Section 12 of this administrative regulation, a program shall have a staff person designated as:

(a) A children and family services coordinator;

(b) A recreational leader; and

(c) A case manager.

Section 14. Residential Transitional Living Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for a residential transitional living program.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) A client shall receive the following services:

(a) An assessment completed by program staff or obtained from a referring program which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and a partner relationship if indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

m. Client strengths and limitations; and

n. Diagnostic impression;

2. An evaluation of a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission, or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:

a. Review of body systems;

b. Surgery and treatment history;

c. Current medical condition;

d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;

e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;

f. Prescription and over-the-counter medication;

g. Allergies including an allergic reaction to a medication; and

h. Identification of a medical condition that may affect a client's participation in treatment;

4. Information from a written report regarding a previous assessment and treatment if available; and

5. A diagnostic summary including an analysis of all assessment

information and a recommended course of treatment;

(b) Treatment planning which includes:

1. A written individualized treatment plan based on an assessment shall be developed for a client within seven (7) calendar days of admission and shall include:

- a. Diagnosis;
- b. Identification of a client's problem;
- c. Goals, measurable objectives and criteria for discharge;
- d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;
- e. Staff person primarily responsible for implementing a treatment plan; and

f. Date for treatment plan review;

2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and

3. A treatment plan and a client's progress shall be reviewed by a clinical staff person and a client monthly and documented in a client record;

(c) Alcohol and other drug abuse counseling shall be provided according to the following:

1. There shall be a focus on problems related to alcohol and other drug abuse;

2. There shall be individual counseling, group counseling or family counseling; and

3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;

(d) Orientation to self-help groups specific to addiction recovery;

(e) Information about community recreational activities, which shall be conspicuously posted in a public area of a facility;

(f) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes a program; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and

(g) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.

(3) A progress note shall be recorded:

(a) Following the delivery of an individual counseling session and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection. A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan.

(4) There shall be documentation in a client record that a client is employed, pursuing employment, participating in vocational education or rehabilitation, or receiving a disability benefit.

(5) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

- (a) Date of admission and discharge;
 - (b) Presenting problem;
 - (c) Diagnosis;
 - (d) Summary of treatment and response to treatment; and
 - (e) Referral made to another organization or provider.
- (6) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(7) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(8) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which shall require physician approval prior to use by a client while in the program;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with a treatment plan, and the verification shall be documented in a client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall only be available to a client at the time it is scheduled to be taken according to a prescription or as directed on a label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

- 1. Name of the medication;
- 2. Date and time of self-administration;
- 3. Dosage and amount of medication; and
- 4. Name of a staff person who monitored the self-administration of a medication.

(9) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) A client involved in preparing meals shall be monitored by a staff person and there shall be documentation that a client receives orientation in health and safety issues related to food preparation;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record;

(e) Adequate food shall be provided to ensure that a client is able to have at least three (3) meals daily; and

(f) Snacks shall be available.

(10) Staffing.

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and an AODE shall ensure that staff include:

- 1. A program manager, supervisor or coordinator;
- 2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and
- 3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered.

(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(11) Within three (3) months of employment, a staff person shall be trained in crisis intervention, cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7, and standard first aid conducted by an instructor certified by the American Red Cross.

Section 15. Outpatient Treatment Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for an outpatient treatment program.

(1) At intake, client identifying and demographic information, emergency contact person and presenting problem shall be obtained from a client.

(2) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

- a. Presenting problem;
- b. History of alcohol and drug use including previous treatment;

- c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;
 - d. Family relationships including childhood and marital history, custody of children, sexual identity and a partner relationship if indicated;
 - e. Legal history;
 - f. Employment and military service history;
 - g. Education and vocational history;
 - h. Social and peer group relationships;
 - i. Religious background and practices;
 - j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;
 - k. Ethnic and cultural background;
 - l. Leisure and recreational activities;
 - m. Client strengths and limitations; and
 - n. Diagnostic impression;
2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;
3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:
- a. Review of body systems;
 - b. Surgery and treatment history;
 - c. Current medical condition;
 - d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;
 - e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;
 - f. Prescription and over-the-counter medication;
 - g. Allergies including an allergic reaction to a medication; and
 - h. Identification of a medical condition that may affect a client's participation in treatment;
4. Information from a written report regarding a previous assessment and treatment if available; and
5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;
- (b) Treatment planning which includes:
- 1. A written individualized treatment plan based on an assessment shall be developed for a client before the fourth client session and shall include:
 - a. Diagnosis;
 - b. Identification of a client's problem;
 - c. Goals, measurable objectives and criteria for discharge;
 - d. Duration, frequency and type of service to be provided including a referral within or outside an agency;
 - e. Individual primarily responsible for implementing a treatment plan; and
 - f. Date for treatment plan review;
 - 2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and
 - 3. Case review of a treatment plan and a client's progress shall be conducted every six (6) months and documented in a client record;
- (c) Alcohol and other drug abuse counseling shall be provided according to the following:
- 1. There shall be a focus on problems related to alcohol and other drug abuse;
 - 2. There shall be individual counseling, group counseling or family counseling; and
 - 3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;
- (d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency,

consistent with a client's treatment plan;

(e) Orientation to self-help groups specific to addiction recovery; and

(f) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes treatment; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note or discharge summary.

(3) A progress note shall:

(a) Be recorded following a client contact; and

(b) If recorded following the delivery of a professional service include a service provided, an observation of a client's behavior and response to a service, and a client's progress toward meeting the goals and objectives of a treatment plan.

(4) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Diagnosis;

(d) Summary of treatment and response to treatment; and

(e) Referral made to another organization or provider.

(5) A twenty-four (24) hour crisis intervention service shall be provided either directly by an AODE or through referral to an outside provider. An AODE shall maintain a telephone-answering system to ensure that referral information regarding a crisis intervention service provided by an outside provider is available to a client twenty-four (24) hours daily.

(6) Personnel requirements shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient personnel to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.

(7) When narcotic maintenance for an opiate addict is provided it shall be provided in accordance with 908 KAR 1:340.

Section 16. Intensive Outpatient Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for an intensive outpatient treatment program.

(1) A structured comprehensive program of individual and group therapeutic activities shall be provided for a minimum of two (2) hours daily, at least three (3) times weekly and may be offered in phases.

(2) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(3) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and a partner relationship if indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

- m. Client strengths and limitations; and
- n. Diagnostic impression;
- 2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;
- 3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:
 - a. Review of body systems;
 - b. Surgery and treatment history;
 - c. Current medical condition;
 - d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;
 - e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;
 - f. Prescription and over-the-counter medication;
 - g. Allergies including an allergic reaction to medication; and
 - h. Identification of a medical condition that may affect a client's participation in treatment;
- 4. Information from a written report regarding a previous assessment and treatment if available; and
- 5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;
- (b) Treatment planning which includes:
 - 1. A written individualized treatment plan based on an assessment shall be developed for a client before the fourth client session and shall include:
 - a. Diagnosis;
 - b. Identification of a client's problem;
 - c. Goals, measurable objectives and criteria for discharge;
 - d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;
 - e. Individual primarily responsible for implementing a treatment plan; and
 - f. Date for treatment plan review;
 - 2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and
 - 3. Case review of a treatment plan and a client's progress shall be conducted monthly and documented in a client record;
 - (c) Alcohol and other drug abuse counseling shall be provided according to the following:
 - 1. There shall be a focus on problems related to alcohol and other drug abuse;
 - 2. There shall be individual counseling, group counseling or family counseling; and
 - 3. A counseling service delivered in a group shall have a maximum of fifteen (15) clients;
 - (d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with a client's treatment plan;
 - (e) Orientation to self-help groups specific to addiction recovery;
 - (f) Relapse prevention which includes:
 - 1. A written relapse prevention plan shall be developed for a client who completes treatment; and
 - 2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and
 - (g) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.
 - (4) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other, and if a service is requested it shall be provided either directly by an AODE or through referral to a qualified outside

provider.

(5) There shall be a time schedule of all planned therapeutic activities and the schedule shall be given to a client or conspicuously posted.

(6) A progress note shall be recorded:

(a) Following the delivery of a professional service and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection. A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan.

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

- (a) Date of admission and discharge;
- (b) Presenting problem;
- (c) Diagnosis;
- (d) Summary of treatment and response to treatment; and
- (e) Referral made to another organization or provider.

(8) A twenty-four (24) hour crisis intervention service shall be provided either directly by an AODE or through referral to an outside provider. An AODE shall maintain a telephone answering system to ensure that referral information regarding a crisis intervention service provided by an outside provider is available to a client twenty-four (24) hours daily.

(9) When a client receives services for at least five (5) consecutive hours daily, food services shall be provided either:

(a) Directly by the program according to the following:

1. Meals shall be provided in accordance with 902 KAR 45:005;

2. There shall be documentation that meal planning is approved by a registered dietician;

3. A client involved in preparing meals shall be monitored by personnel and there shall be documentation that a client receives orientation in health and safety issues related to food preparation; and

4. A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record; or

(b) A client shall be allowed adequate time to eat food obtained outside the facility.

(10) Personnel requirements shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient personnel to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 13, 1998

FILED WITH LRC: April 14, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Thursday, May 21, 1998 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, May 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit

written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below:

CONTACT PERSON: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - W-C, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: Currently there are approximately 110 persons or agencies licensed as nonmedical alcohol and education (NATE) centers and drug abuse treatment and education (DATE) centers which are affected. These persons or agencies operate 428 facilities and provide services to approximately 55,000 clients per year. All licensed persons and agencies will be affected by the revised licensure requirements which will now require them to be licensed as an alcohol and other drug abuse treatment entity (AODE).

(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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: There will be a total of \$21,080 in increased costs for 14 of the agencies to license 136 additional facilities at \$155 for each facility. These 14 agencies were previously eligible to operate their alcohol and other drug abuse outpatient and intensive outpatient treatment programs under their community mental health center license. However, these new licensing requirements no longer allow for this exemption. The \$21,080 in increased costs will be offset by \$2,180 in reduced licensing fees because the community mental health centers will no longer have to license 14 facilities that were previously licensed as a NATE and DATE education program. These new regulations do not license education programs. There will be a total of \$31,050 in increased costs for 110 licensed persons and agencies to obtain this new AODE license for 414 of their currently licensed facilities. These persons and agencies will be required to pay a \$155 fee for a new AODE license rather than an \$80 fee to renew their existing license. This will result in an increased cost of 75 dollars for each currently licensed facility. When an AODE changes its name there will be an increased cost of 25 dollars for processing the change. When an AODE changes its location there will be an increased cost of eighty (80) dollars to license the new facility. There may be increased costs associated with the stricter requirements for clinical supervision and the documentation of clinical supervision. There will be increased costs of \$21,000, to train approximately 150 clinical supervisors in a Division of Substance Abuse approved clinical supervision training, at an estimated cost of \$140 per person. There will be increased costs of \$4,200, to train approximately 30 case managers in a Division of Substance Abuse approved case management training, at an estimated cost of \$140 per person. There may be some additional costs related to the increased paper work requirements associated with the documentation of staff training. There will be increased costs

for AODE's not previously carrying liability insurance. In addition, there will be increased costs for approximately 75 for-profit licensed AODEs which will be required to pay 10 dollars for a criminal background check on each current and prospective employee.

2. Second and subsequent years: There will be a total of \$10,880 in increased costs for the 14 community mental health centers, to renew the licenses for the 136 additional facilities that were newly licensed the first year, at a cost of 80 dollars per facility. There will be no increased cost for the other 414 previously licensed facilities as they currently are required to pay the same 80 dollar relicensure fee for each of their facilities. The estimated 75 for-profit licensed AODEs will be required to pay 10 dollars for a criminal background check on prospective employees only. Staff training costs associated with the requirement for clinical supervision and case management training would be reduced to approximately \$8,300. This training cost would cover any new staff employed as a result of staff turnover.

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There will be some cost to provide technical assistance to the AODEs affected and training to the Office of Inspector General, Cabinet for Health Services, which is the administrative body responsible for enforcing this licensure regulation. There may be minimal increased costs associated with the process of approving case management and clinical services supervision training.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

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

There will be increased state revenues in the form of licensure fees paid for each facility. There may be increased state revenues associated with new licensure costs if an agency changes its name or location.

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

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

(a) Geographical area in which administrative regulations will be implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The licensure standards should improve the quality of services delivered to alcohol and other drug abuse clients particularly with the stricter requirements related to staff supervision. Improving the quality of treatment services provided to clients should decrease the abuse of alcohol and other drugs, thereby improving the health and safety of the citizens of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if the standards in this administrative regulation are not implemented.

(c) If detrimental effect would result explain detrimental effect: Public health and safety may suffer if lesser standards for the delivery of alcohol and other drug abuse treatment services are allowed.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy in conflict.

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

(b) If in conflict, was effort made to harmonize the proposed

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administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not used since the requirements apply equally to all agencies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although approximately 22 licensed AODEs affected by this regulation receive federal funds from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate for these AODEs to deliver the services which this regulation governs. This regulation is only mandated by state statute.

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 the federal mandate? None

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of April 15, 1998

The April meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, April 15, 1998 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the March 11, 1998 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis, and Dick Roeding; Representatives Jimmie Lee, and James Bruce.

LRC Staff: Greg Karambellas, Stephen Lynn, Susan Wunderlich, Angela Phillips, Veronica Power.

Guests: Ronald Pritchert, Kentucky Fish and Wildlife Resources; Mark Farrow, Don L. Notter, Department of Agriculture; Jim Villines, Ronald Mills, Carl Campbell, Richard Prelopski, Natural Resources and Environmental Protection Cabinet; Tamela Biggs, Brenda Priestly, Department of Corrections; Sandra Pullen Davis, Transportation Cabinet; Rita Osborne, Education Professional Standards Board; Ronda Tamme, Marilyn Kay Troupe, Office of Teacher Education and Certification; Deborah Eversole, Public Service Commission; Rena Elswick Strevels, Kentucky Racing Commission; Kembra Taylor, Bill Ralston, Labor Cabinet; Ralph Von Derau, Eric Friedlander, Bruce Scott, John A. Volpe, Vicki Jeffs, Ruth Friedheim, Gail Wells, Joyce Metts, Cookie Whitehouse, Patricia Peery, Marilyn Ferguson, Brenda Brondenburg, Trish Howard, Dudley Jones, Dionna Burchett, Barbara Stewart, Mike Littlefield, Cabinets for Health Services and Families and Children; Lowell Reese, Kentucky Roll Call; Mike Porter, Kentucky Dental Association; Robert L. Barnett, Kentucky Pharmacists Association.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:221 & E. Waterfowl seasons and limits. Ronald Pritchert, Migratory Bird Coordinator, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a citation to the Code of Federal Regulations; and (2) Sections 2(1)(a) and 3(3)(c)4. were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:222 & E. Waterfowl hunting requirements. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a citation to the Code of Federal Regulations; (2) the NECESSARY, FUNCTION, AND CONFORMITY paragraph was amended to clearly establish the differences between this administrative regulation and federal regulations; and (3) Section 5(3) was amended to comply with the formatting requirements of KRS 13A.220(4).

Department of Agriculture: Division of Regulation and Inspection: Livestock Sanitation

302 KAR 20:240. Mycobacterium paratuberculosis (Johnes). Mark Farrow, Deputy Commissioner and General Counsel, and Dr. Don L. Notter, State Veterinarian, Department of Agriculture appeared before the Subcommittee. Mr. Farrow stated that: (1) Johnes's disease was a wasting disease that primarily affected cattle; and (2) this administrative regulation established a voluntary plan that allowed the state to begin control of the disease which would improve the marketability of Kentucky cattle.

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 was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to: (a) place the definitions in alphabetical order, as required by KRS 13A.222(4)(e); and (b) delete the definitions of terms that were not used in this administrative regulation, as required by KRS 13A.222(4)(e); (4) Sections 1 through 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 (5) a new Section 7 was created to incorporate by reference the management agreement plan.

Justice Cabinet: Office of the Secretary

501 KAR 6:120. Blackburn Correctional Complex. Tamela Biggs, Staff Attorney, represented the Department.

In response to a question by Senator Kafoglis, Subcommittee staff stated that this: (1) administrative regulation was amended to accurately reflect that a private canteen vendor would receive profit from operating the inmate canteen; and (2) amendment addressed the issue raised in the initial staff review.

BCC 02-02-02, VII. of this administrative regulation was amended to reflect that the canteen vendor would receive profit, pursuant to KRS 13A.222(4)(a).

501 KAR 6:999. Secured policies and procedures. Pursuant to KRS 61.815(2)KRS 61.810(1)(i) and (k), and KRS 197.025(5), the Subcommittee went into closed session to review 501 KAR 6:999. Secured policies and procedures.

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. Sandra Pullen-Davis, Transportation Cabinet, appeared before the Subcommittee. This administrative regulation was amended as follows:(1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 3(1), 3(2), and 5(1) were amended to increase the number of permit holders who would be surveyed to determine the average fair market value rental and lease amounts to reflect the number of permit holders who were surveyed in determining those amounts; and (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).

601 KAR 1:147. Auditing of U-drive-it permit holders. Sandra Pullen-Davis, Transportation Cabinet, appeared before the Subcommittee. This administrative regulation was amended as follows: (1) the RELATES TO 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) Section 2(2) was amended to clarify that a holder of a U-Drive-It permit who leases vehicles shall retain a copy of the leasing agreement and the information required by Section 2(2); (4) Sections 3(3) and 3(4) were amended to clarify the penalties for failure of a permit holder to submit the required records; (5) Section 4(4) was amended to specify that a permit holder shall: (a) pay the tax due; or (b) file an appeal within the specified time frame; and (6) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Education, Arts and Humanities Cabinet: Education Professional Standards Board

704 KAR 20:015 & E. Rank I classification. Rhonda Tamme, Director, Teacher Certification; Rita Osborne, Director, Division of Testing and Internship, Education Professional Standards Board; and Marilyn Kay Troupe, Director, Office of Teacher Education and Certification appeared before the Subcommittee. 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, 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 (4) Section 7 was amended to: (a) establish the fee at \$1200; and (b) delete language providing that the fee shall not exceed \$1200, as required by KRS 13A.100 and 13A.130.

704 KAR 20:021 & E. Planned Fifth-year Program. This administrative regulation was amended as follows: (1) Sections 2(1), 3(2), and 5 were amended to cross-reference the applicable administrative regulations; and (2) Sections 1, 2, 3, 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).

704 KAR 20:022 & E. Continuing education alternative to planned fifth-year program. In response to a question by Chairman Arnold, Board personnel stated that: (1) the \$1,200 fee was not an increase; (2) this administrative regulation: (a) did not specify the exact fee; and (b) only established the upper limit for the fee; (3) Subcommittee staff had informed them that KRS Chapter 13A required that an administrative regulation establish the specific fee that was to be assessed by an administrative body; (3) the proposed amendment relating to this fee established \$1,200 as the amount of the fee; (4) because the agency believed that the \$1,200 fee would not cover the cost, to ensure the quality of this process, it planned to establish committees to review the: (a) portfolios that would be submitted; and (b) related costs.

Senator Roeding: (1) asked for an explanation of the need to promulgate an emergency administrative regulation on this subject matter; and (2) questioned whether promulgation of an emergency administrative regulation governing this subject matter complied with KRS 13A.190. Agency personnel stated that: (1) the emergency was required because the authorizing statute specified that agency action was required by January 1, 1998; and (2) because the major impact on the quality of teachers and education in Kentucky required a great deal of committee work, promulgation of this administrative regulation was delayed. Senator Roeding stated that: (1) the authorizing statute was enacted in 1996, two years before promulgation of this administrative regulation; (2) the two year delay was excessive and did not appear justified; (3) the use of emergency administrative regulations that established or changed fees was objectionable; and (4) the emergency administrative regulation procedure established by KRS Chapter 13A: (a) should not be used to establish or change fees; and (b) did not authorize an emergency because an agency delayed promulgation of an administrative regulation beyond the deadline for promulgation established by the statute governing the subject matter of the administrative regulation. Agency personnel: (1) acknowledged the delay; and (2) stated that the: (a) great number of committees that had to review and respond to the proposed administrative regulation resulted in the delay; and (b) agency wanted an administrative regulation that: 1. ensured quality; and 2. was based on input from all parties. Senator Roeding stated that: (1) the delay was not one of the reasons for the promulgation of an emergency administrative regulation established by KRS Chapter 13A; and (2) he would have to object to this administrative regulation because it violated KRS 13A.190.

Chairman Arnold: (1) stated that he shared Senator Roeding's

concerns over the use of the emergency administrative regulation procedure in these cases; (2) had noticed that a great number of administrative regulations had been filed as emergencies that should not have been filed as emergency administrative regulations; (3) urged this, and other agencies, to complete the work required for the promulgation of an administrative regulation in sufficient time to comply with statutory deadlines; and (4) use of the emergency procedure in these cases, especially when the administrative regulation imposed fees, created too many problems.

Senator Roeding stated that agencies should make every effort to: (1) meet deadlines; and (2) notify affected entities and receive comments well in advance of deadlines.

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 4 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 5 was amended to (a) establish the fee at \$1200; and (b) delete language providing that the fee shall not exceed \$1200, as required by KRS 13A.100 and 13A.130.

The Subcommittee approved this administrative regulation as amended, with Senator Roeding voting against approval.

704 KAR 20:045 & E. Recency and certification fees. Senator Roeding stated that this administrative regulation appeared to be another emergency administrative regulation to which his comments on 704 KAR 20:022 & E applied. In response to questions by Senator Roeding, agency personnel stated that the fees imposed by this administrative regulation had not been: (1) established by emergency administrative regulation; or (2) amended by the amendments to this administrative regulation that were before the Subcommittee.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 2(1)(c) was amended to clarify the requirements for issuing and renewing a teaching certificate; (3) Section 3 was amended to delete provisions that repeated or summarized statutory language, as required by KRS 13A.120(2)(e) and (f); and (4) Sections 2 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:060 & E. Renewals. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1, 3 and 9 were amended to delete provisions that repeated or summarized statutory language, as required by KRS 13A.120(2)(e) and (f); and (3) Sections 2 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).

704 KAR 20:420. Certification for school superintendent. In response to a question by Chairman Arnold, agency personnel stated that a post-master's level could be as high a rank as a Level I, depending upon how the program was written and approved.

This administrative regulation was amended as follows: (1) the RELATES TO 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) Section 1(1) was amended to: (a) clarify the requirements for issuance of the certificate for a school superintendent; and (b) cross-reference applicable administrative regulations; (4) Section 1(3)(d) was amended to establish an exception for a candidate who completed the preparation for principal prior to 1988; (5) Section 3(1) was amended to require completion of an approved program of prepara-

tion for superintendent at the post-master's level, rather than the Rank I level; (6) Section 3(2)(a) was amended to clarify that the renewal of the certificate required completion of two years experience as a school superintendent or assistant superintendent; and (7) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:475. Probationary certificate for teachers of technology education. In response to questions by Chairman Arnold, agency personnel stated that Subcommittee staff informed them that a "qualified technology teacher" would have: (1) had specific training in computers, and, possibly, a business background, and instructional technology that would help teachers; and (2) a teaching degree with a specialty in technology.

This administrative regulation was amended as follows: (1) Section 1 was amended to define "qualified teacher", rather than "qualified technology education teacher", because "qualified teacher" was the term used in this administrative regulation; and (2) Sections 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).

704 KAR 20:700. Standards for admission to teacher education. In response to a question by Chairman Arnold, agency personnel stated that this administrative regulation did not make changes to the standards.

In response to a question by Senator Roeding, agency personnel stated that: (1) ATT scores were used for admissions to teacher ed, rather than SAT scores; (2) institutions may choose the test; (3) SAT could not be used; and (4) the publishers of SAT were studying whether SAT was technically valid for teacher ed.

This administrative regulation was amended as follows: Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

The Subcommittee approved this administrative regulation as amended, with Senator Roeding voting against approval.

Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. Ralph Von Derau, Health Planner, Office of the Inspector General appeared before the Subcommittee. In response to a question by Senator Roeding, Mr. Von Derau stated that the fees in the fee schedule, Section 3, had not been increased.

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) Section 2 was amended to: (a) delete language that repeated or summarized statutory language, as required by KRS 13A.120(2)(e) and (f); (b) cross-reference the applicable statute; (c) specify the applications that an applicant was required to file; and (d) clarify the reporting requirements for licensees; (4) Sections 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 (5) a new Section 4 was created to incorporate by reference the required application forms.

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 5(3) was amended to insert a cross reference the applicable administrative regulation; and (3) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance

904 KAR 2:410 & E. Child support collection and distribution. Ruth Friedheim, branch manager, Gail Wells, Division of Child Support Enforcement, and Joyce Metts, represented the Department.

In response to a question by Chairman Arnold, Ms. Friedheim stated that: (1) the Division collected child support; (2) depending on whether the family was receiving KTAP assistance, the Division distributed the child support payments; and (3) if a case was submitted to the Federal government for income tax intercept, it was also sent to the State Department for denial of a passport if past due child support exceeded \$5,000.

In response to a question by Senator Roeding, Ms. Friedheim stated that this administrative regulation applied to collection of child support payments on behalf of children: (1) who receive KTAP benefits; (2) for whom application of KTAP benefits had been made; (3) whose child support case was handled by the Cabinet, even though they did not receive KTAP benefits, may or may not be receiving KTAP benefits.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation as required by KRS 13A.220(3)(f); (2) Sections 2(1), 2(3), 2(4), 6(2), 9(1), and 9(3) were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Sections 2(1), 2(2), and 11 were amended to comply with the formatting requirements of KRS 13A.220(4).

Cabinet for Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:145 & E. Supports for community living services for individuals with mental retardation or developmental disabilities. Patricia Peery, Trish Howard, and Marilyn Ferguson, Medicaid Services appeared before the Subcommittee.

In response to questions by Chairman Arnold and Senator Roeding, agency personnel stated that: (1) this administrative regulation was filed because the previous alternative intermediate services for mentally retarded persons waiver was expiring; (2) a new administrative regulation was required for a new waiver; (3) the new waiver, for which the Department had filed a request to HCFA, was the support for community living waiver; (4) the waiver: (a) related to services for persons who were mentally retarded or had developmental disabilities; and (b) would provide alternatives to inpatient treatment, by providing for community based services.

In response to a question by Senator Roeding, agency personnel stated that this administrative regulation did not relate to patients at nursing or rest homes, or issues raised by their disqualification.

This administrative regulation was amended as follows: (1) Section 1 was amended to include a definition of "wellness monitoring"; (2) Section 2(3) was amended to clarify that an individual eligible for Medicaid who is an inpatient or resident of a facility: (a) may apply for a covered service while he was an inpatient or resident; and (b) shall not receive the service while he was an inpatient or resident; (3) Section 2(4) was amended to clarify the requirements for excluding an individual from coverage because of the costs of the service, as required by 42 USC 1396n(c)(3); (4) Section 4(1)(j) was amended to cross-reference the applicable federal regulation; and (5) Sections 2, 4, 6, and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:155 & E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities. This administrative regulation was amended as follows: (1) Section 7 was amended to clarify the appeal rights for a beneficiary or provider; and (2) Sections 3 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).

**Department of Mental Health and Mental Retardation Services:
Division of Mental Retardation: Substance Abuse**

908 KAR 1:380. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs. Mike Littlefield, Administrative Regulations Coordinator, and Barbara Stewart, Manager of Prevention Services for the Division of Substance Abuse, represented the Department.

In response to questions by Chairman Arnold and Representative Bruce, Mr. Littlefield stated that: (1) this administrative regulation established specific licensing requirements for substance abuse prevention programs; (2) the programs were operated through the: (a) community mental health centers; and (b) regional prevention centers; (3) each community mental health and mental retardation regional board had a program.

In response to questions by Representative Bruce, Ms. Stewart stated that: (1) there were probably five (5) or six (6) private, non-profit substance abuse programs that offered prevention services to the community; (2) these programs: (a) reduced the risk that a person will become dependent or develop other alcohol and drug problems; (b) were not for persons who were already addicted; (3) Cumberland Hall in Hopkinsville: (a) was a program for persons already dependent on alcohol or other drugs; and (b) would not be included in the type of program governed by this administrative regulation; (4) the success rate for this program depended on: (a) different strategies for: 1. alcohol; 2. tobacco; and 3. other drugs; and (b) the age of the person involved; (5) tobacco was a part of the agency's federal charge; and (6) the programs addressed youthful tobacco use and not adult use.

Representative Bruce stated that he: (1) did not see why tobacco was included or addressed in this program; (2) grew tobacco, and resented that tobacco was treated like drugs and alcohol; (3) statistics showed that drugs and alcohol killed more people than tobacco; (4) could not imagine what the program could do for tobacco use; (5) had quit using tobacco, although it had not been easy; (6) did not believe a mental health facility could have helped him; and (7) simply made up his own mind to quit.

In response to a question by Representative Bruce, Ms. Stewart stated that: (1) if young people under the age of eighteen (18) smoked, they may be more likely to use marijuana and alcohol; (2) the program tried to work with young people about making healthy choices in general; and (3) tobacco was a tough issue.

In response to questions by Chairman Arnold, Ms. Stewart stated that: (1) personnel of the agencies that implemented the programs were professionals who: (a) worked with: 1. schools; 2. community coalitions; and 3. parent groups in the community; (b) helped them understand the issues of alcohol and drug prevention; and (c) provided special training and consultation to help in their work with young persons; (2) her previous comments regarding tobacco leading to marijuana and alcohol use were erroneous (3) she did not want to mislead the Subcommittee; (4) the work of the Division of Mental Retardation was prevention in general; (5) a part of the requirement imposed by the federal government in order to receive federal funding was to address tobacco issues; (6) this administrative regulation: (a) did not license tobacco prevention programs; and (b) licensed programs for alcohol and other drugs.

In response to a question by Representative Bruce, Ms. Stewart stated that tobacco was not included in this administrative regulation.

In response to questions by Representative Bruce, Mr. Littlefield stated that: (1) the Department would not promulgate an administrative regulation that addressed tobacco; (2) tobacco was addressed by these services, by virtue of their trying to help children and families make healthy lifestyle choices.

Representative Bruce stated that he wanted to review this administrative regulation in one (1) year to see if the Department was working: (1) against tobacco; or (2) with the Robert K. Wood Foundation.

In response to a question by Chairman Arnold, Ms. Stewart stated that she personally had not found that a young person was more

likely to abuse marijuana or alcohol if they smoked cigarettes.

This administrative regulation was amended as follows: (1) in accordance with KRS 13A.222(4)(j), Section 8(2) was amended to delete "ombudsperson" and to insert "ombudsman" in lieu thereof; (2) pursuant to KRS 13A.222(4)(a), Section 10(2) was amended to delete "conditions" and to insert "violation" in lieu thereof, because revocation occurs after a violation rather than pursuant to a condition; (3) Sections 1, 2, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 7(2) was amended to comply with the formatting requirements of KRS 13A.220(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Education, Arts and Humanities Cabinet: Education Professional Standards Board

704 KAR 20:696. Standards for accreditation of teacher education units and approval of programs. In response to a question by Chairman Arnold, agency personnel stated that the standards for accreditation had not been amended.

In response to a question by Senator Roeding, agency personnel stated that the performance assessment: (1) had been established previously; and (2) had not been established by the amendments to this administrative regulation that were before the Subcommittee.

Agency personnel stated that, pursuant to Subcommittee staff comments, the agency had filed the summary of the amendments to the material incorporated by reference, as required by KRS 13A.2255(2).

Public Service Commission: Utilities

807 KAR 5:004. Repeal of 807 KAR 5:002. Deborah Eversole, staff attorney, Public Service Commission appeared before the Subcommittee. Ms. Eversole stated that this administrative regulation repealed 807 KAR 5:002, which was obsolete because: (1) when 807 KAR 5:002 was promulgated, the Commission had the authority to organize its offices by administrative regulation; (2) KRS 278.115 had been amended to provide that Commission organization was subject to the reorganization procedures established by KRS Chapter 12; and (3) House Bill 363, enacted during the 1998 Regular Session, confirmed the Governor's reorganization of the Commission.

In response to a question by Chairman Arnold, Ms. Eversole stated that the Commission would promulgate administrative regulations as required by reorganization.

Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center.

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

902 KAR 20:330. Psychiatric residential treatment facilities.

Bruce Scott, Division of Mental Health, appeared before the Subcommittee.

In response to a question by Chairman Arnold, Mr. Scott stated that, because of the need for psychiatric care, 902 KAR 20:320 and 902 KAR 20:330 changed requirements to make it easier for operators of psychiatric residential treatment facilities to: (1) open such facilities; (3) retained stringent requirements relating to opening and the operation of such facilities; and (3) established requirements for the verification of professional staff to ensure staff professionalism had not eroded.

Senator Roeding stated that: (1) since 1991, attempts had been made to open psychiatric residential treatment facilities; (2) existing regulatory requirements needed to be amended to make it easier to open these facilities; (3) he hoped regulatory requirements had been amended to make it easier to open these facilities, that provide a necessary service in Kentucky; and (4) the number of facilities had increased from 8 to 16. In response to a question by Senator

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Roeding, Mr. Scott stated that by statute, these facilities were banned from a psychiatric campus.

In response to a question by Chairman Arnold, Mr. Scott stated that these facilities required a Certificate of Need.

Radiology

902 KAR 100:019. Standards for protection against radiation.

Department for Medicaid Services

907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150. (Expired 3/29/98)

The agencies agreed to the Subcommittee's request to defer consideration of the following administrative regulations to the April, 1998 meeting of the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Permits

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: Kentucky Parole Board

501 KAR 1:030E. Determining parole eligibility.

Office of the Secretary

501 KAR 6:020E. Department of Corrections' policies and procedures.

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

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Administration

601 KAR 2:020E. Drivers' privacy protection.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:190. Utilization review and medical bill audit.

Department of Insurance: Assets and Liabilities

806 KAR 6:100E. Actuarial opinion and memorandum.

Health Insurance Contracts

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

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures.

810 KAR 1:026. Racing associations.

Harness Racing

811 KAR 1:085. Conduct of racing.

811 KAR 1:220. Harness racing at county fairs.

Cabinet for Health Services: 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 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

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: Payment and Services

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

OTHER BUSINESS:

The Subcommittee determined that the following administrative regulations complied with statutory authority and was no longer deficient:

Justice Cabinet: Department of Corrections: Jail Standards for Counties Not Housing Class D Felons

501 KAR 13:010. Life safety issues. Subcommittee staff informed Subcommittee members that: (1) 501 KAR 13:010 had been found deficient by the Administrative Regulation Review Subcommittee at its October 10, 1996 meeting; (2) Section 1(2), House Bill 370, enacted at the 1998 Regular Session of the General Assembly requires the Department of Corrections to: (a) adopt the recommendations of the Jail Standards Commission; and, (b) promulgate administrative regulations pursuant to KRS Chapter 13A to establish minimum standards for health and life safety for county jails that elect not to hold state prisoners; (3) The provisions of 501 KAR 3:010 relate only to health and life safety standards for county jails that elect not to hold state prisoners; and (4) Pursuant to KRS 13A.333(5), 501 KAR 13:010 would not expire because: (a) the enactment of House Bill 370 authorized the Department to promulgate an administrative regulation to establish health and life safety standards for county jails that elect not to hold state prisoners; and (b) 501 KAR 13:010 establishes such standards in conformity with House Bill 370.

The Subcommittee approved a motion by Representative Lee that the Subcommittee reconsider and remove its finding of deficiency.

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

803 KAR 2:411. Scaffolds. Kembra Taylor, General Counsel, and Bill Ralston, Safety Standards Specialist, Labor Cabinet, appeared before the Subcommittee. The Subcommittee approved a motion by Representative Lee that the Subcommittee reconsider and remove its December 9, 1997 finding of deficiency.

The Subcommittee adjourned at 11 a.m. until May 12, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates K2

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 K12

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 K22

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.

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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
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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		
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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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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)

12 KAR 4:170E	2326	4-7-98
200 KAR 14:011E	485	8-15-97
Replaced	1645	2-10-98
200 KAR 14:081E	487	8-15-97
Replaced	1647	2-10-98
200 KAR 14:200E	489	8-15-97
Replaced	1649	2-10-98
200 KAR 15:010E	2327	4-7-98
200 KAR 23:010E	307	6-25-97
Replaced	1055	10-22-97
201 KAR 20:370E	1481	12-9-97
Replaced	2112	4-13-98
301 KAR 2:221E	1219	10-15-97
301 KAR 2:222E	1221	10-15-97
301 KAR 2:225E	842	8-21-97
Replaced	1670	2-17-98
301 KAR 2:290E	1482	12-5-97
Withdrawn		1-21-98
302 KAR 20:040E	2330	4-3-98
401 KAR 5:008E	1029	9-18-97
Replaced	1899	4-13-98
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
Replaced	1878	3-16-98
502 KAR 31:010E	2076	2-27-98
502 KAR 45:145E	26	6-3-97
Replaced	1076	11-14-97
505 KAR 1:040E	844	9-15-97
Expired		3-29-98
601 KAR 2:020E	1863	2-13-98
603 KAR 5:070E	27	5-19-97
Expired		12-18-97
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
Expired		1-16-98
787 KAR 1:200E	310	6-27-97
Replaced	1510	1-12-98
787 KAR 1:210E	2078	3-10-98
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
803 KAR 6:010E	2333	3-20-98
806 KAR 6:100E	1227	10-24-97
806 KAR 17:110E	1492	12-12-97
815 KAR 8:045E	2079	2-27-98
900 KAR 6:050E	510	7-21-97
Expired		3-20-98
902 KAR 17:041E	517	7-23-97
Expired		3-20-98
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
Replaced	1884	3-16-98
904 KAR 2:015	1634	1-12-98
904 KAR 2:016E	528	8-14-97
Replaced	1724	3-16-98
904 KAR 2:017E	311	7-14-97
Expired		2-15-98
904 KAR 2:035E	42	5-30-97
Expired		12-18-97
904 KAR 2:040E	45	5-30-97
Expired		1-18-98
904 KAR 2:046E	47	5-30-97
Expired		1-18-98
904 KAR 2:050E	49	5-30-97
Withdrawn		8-14-97
Resubmitted	538	8-14-97
Expired		2-18-98
904 KAR 2:055E	52	5-30-97
Expired		1-18-98
904 KAR 2:060E	55	5-30-97
Expired		12-18-97
904 KAR 2:370E	320	7-11-97
Expired		2-15-98
904 KAR 2:410E	1233	10-31-97
904 KAR 3:025E	1041	10-1-97
Replaced	1791	4-13-98
905 KAR 1:360E	1044	10-1-97
905 KAR 2:150E	1947	10-1-97
906 KAR 1:120E	540	7-25-97
Replaced	1687	2-17-98
907 KAR 1:006E	2337	4-6-98
907 KAR 1:011E	2339	4-6-98
907 KAR 1:022E	542	8-14-97
Withdrawn		2-18-98
Resubmitted	2080	2-18-98
907 KAR 1:025E	547	8-14-97
Withdrawn		2-18-98
Resubmitted	2086	2-18-98
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 1:560E	2093	2-18-98
907 KAR 1:563E	2097	2-18-98
907 KAR 1:605E	2344	4-6-98
907 KAR 1:640E	2346	4-6-98
907 KAR 1:645E	2350	4-6-98

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
907 KAR 1:725E	1238	11-14-97	200 KAR 14:081		
Withdrawn		2-24-98	Amended	1355	
907 KAR 1:755E	554	8-14-97	As Amended	1647	2-10-98
Withdrawn		2-18-98	200 KAR 14:200	1422	
Resubmitted	2100	2-18-98	As Amended	1649	2-10-98
907 KAR 1:765E	557	8-14-97	200 KAR 17:070		
Expired		2-18-98	As Amended	855	9-25-97
907 KAR 3:030E	1639	12-19-97	200 KAR 22:040		
908 KAR 2:210E	2352	4-6-98	Repealed	789	11-14-97
			200 KAR 22:041	789	11-14-97
			200 KAR 23:010	790	
			As Amended	1055	10-22-97
			201 KAR 1:300		
			Amended	2406	
			201 KAR 2:030		
			Amended	1115	
			As Amended	1865	3-16-98
			201 KAR 8:390		
			Amended	931	
			As Amended	1650	2-17-98
			201 KAR 8:400		
			Amended	934	
			As Amended	1243	
			Withdrawn		12-3-97
			Amended	2409	
			201 KAR 8:410		
			Repealed	991	11-19-97
			201 KAR 8:411	991	11-19-97
			201 KAR 10:010		
			Amended	131	
			As Amended	561	11-14-97
			201 KAR 10:040		
			Amended	132	
			As Amended	561	11-14-97
			201 KAR 10:070		
			Amended	133	
			As Amended	563	11-14-97
			201 KAR 10:080		
			Amended	134	
			As Amended	563	11-14-97
			201 KAR 11:011		
			Amended	1539	
			As Amended	2108	4-13-98
			Amended	2410	
			201 KAR 11:147		
			Amended	2412	
			201 KAR 11:170		
			Amended	2413	
			201 KAR 11:175		
			Amended	2414	
			201 KAR 11:230		
			Amended	2415	
			201 KAR 11:350		
			Amended	2417	
			201 KAR 12:200		
			Amended	1357	
			As Amended	1653	
			Reprinted	2061	2-26-98
			201 KAR 12:210	1423	
			As Amended	1654	2-26-98
			201 KAR 13:080		
			As Amended	858	10-13-97

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:130		
Amended	1538	
As Amended	1865	3-16-98
11 KAR 6:010		
Amended	914	
As Amended	1241	12-4-97
13 KAR 2:045		
Amended	2136	
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	
As Amended	2105	4-13-98
101 KAR 1:335		
Amended	1751	
As Amended	2106	4-13-98
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	2-10-98
106 KAR 2:010		
Recodified as 201-37:010		10-20-97
200 KAR 2:006		
Amended	922	11-11-97
200 KAR 5:021		
Amended	926	
Amended	1294	1-12-98
200 KAR 5:302		
Amended	927	11-11-97
200 KAR 5:306		
Amended	929	11-11-97
200 KAR 6:050		
Expired		4-15-98
200 KAR 14:011		
Amended	1353	
As Amended	1645	2-10-98

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 16:060			201 KAR 26:155		
Amended	641		Amended	1121	
As Amended	1055	11-14-97	As Amended	1658	2-17-98
201 KAR 16:070			201 KAR 26:160		
Repealed	791	11-14-97	Amended	1123	
201 KAR 16:071	791	11-14-97	As Amended	1660	2-17-98
201 KAR 18:130			201 KAR 26:171		
Repealed by 201-18:162	1581	3-12-98	Amended	1124	
201 KAR 18:132	1581	3-12-98	As Amended	1661	2-17-98
201 KAR 18:150			201 KAR 26:175		
Amended	1540		Amended	1127	
As Amended	1866		As Amended	1664	2-17-98
Reprint	2062	3-12-98	201 KAR 26:180		
201 KAR 18:160			Amended	1129	
Repealed by 201-18:162	1581	3-12-98	As Amended	1666	2-17-98
201 KAR 18:162	1581	3-12-98	201 KAR 26:185		
201 KAR 19:087	2241		Amended	1130	
201 KAR 19:095			As Amended	1666	2-17-98
Amended	2141		201 KAR 26:215		
201 KAR 20:056			Amended	1131	
Amended	2421		As Amended	1667	2-17-98
201 KAR 20:070			201 KAR 26:230		
Amended	1752		Amended	1132	
As Amended	2108	4-13-98	As Amended	1667	2-17-98
201 KAR 20:110			201 KAR 26:250		
Amended	1754		As Amended	1669	2-17-98
As Amended	2110	4-13-98	201 KAR 26:260		
201 KAR 20:162			As Amended	1870	3-16-98
Amended	1755		201 KAR 32:030		
As Amended	2111	4-13-98	Amended	642	
201 KAR 20:240			As Amended	1132	11-14-97
Amended	391		201 KAR 37:010		
As Amended	1057	11-14-97	Recodified from 106-2:010		10-20-97
201 KAR 20:370			Amended	1544	
Amended	1757		As Amended	1871	3-16-98
As Amended	2112	4-13-98	301 KAR 1:085		
201 KAR 20:390			Amended	1759	
Amended	1116		Withdrawn		3-10-98
As Amended	1502	1-12-98	301 KAR 1:192		
201 KAR 20:411	425		As Amended	1669	2-17-98
As Amended	859		301 KAR 1:201		
201 KAR 23:010			Amended	392	
Repealed		10-13-97	As Amended	866	10-8-97
201 KAR 23:030			301 KAR 1:300		
Repealed		10-13-97	As Amended	1872	3-16-98
201 KAR 23:040			301 KAR 1:310		
Repealed		10-13-97	As Amended	1872	3-16-98
201 KAR 23:060			301 KAR 2:082	427	
As Amended	860	10-13-97	As Amended	869	10-8-97
201 KAR 23:070			301 KAR 2:111		
As Amended	861	10-13-97	Amended	138	
201 KAR 23:080			As Amended	567	9-10-97
As Amended	864	10-13-97	301 KAR 2:125		
201 KAR 23:100			Amended	140	
Repealed	10-13-97		As Amended	568	9-10-97
201 KAR 23:110			301 KAR 2:140		
Repealed		10-13-97	Amended	643	
201 KAR 23:140			As Amended	1058	11-12-97
As Amended	866	10-13-97	301 KAR 2:142	792	
201 KAR 26:145			As Amended	1060	11-12-97
Amended	1117		301 KAR 2:144	794	
As Amended	1655	2-17-98	As Amended	1061	11-12-97

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
301 KAR 2:221			401 KAR 50:012		
Amended	1914		Amended	648	11-12-97
As Amended	2358		401 KAR 50:032	1425	
301 KAR 2:222			Amended	1911	
Amended	1916		As Amended	2116	4-13-98
As Amended	2359		401 KAR 50:066	800	
301 KAR 2:225			As Amended	1244	11-12-97
Amended	1359		401 KAR 51:010		
As Amended	1670	2-17-98	Amended	650	11-12-97
301 KAR 2:240			401 KAR 58:001	2039	
Amended	1762		401 KAR 58:005		
As Amended	2114	4-13-98	Amended	1920	
301 KAR 3:010			401 KAR 58:025		
Amended	2422		Amended	1927	
301 KAR 3:022			401 KAR 59:174	802	
Amended	646	11-12-97	Amended	1295	
302 KAR 10:060			As Amended	1503	1-12-98
Amended	1546		401 KAR 60:750	1427	
As Amended	1873	3-16-98	As Amended	2117	4-13-98
302 KAR 10:070			401 KAR 61:036	1429	
Amended	1764		As Amended	2118	4-13-98
As Amended	2115	4-13-98	401 KAR 63:005		
302 KAR 10:100	2242		Amended	654	
302 KAR 20:076			Amended	1299	1-12-98
Repealed by 302-20:077	1795	4-13-98	401 KAR 63:060		
302 KAR 20:077	1795	4-13-98	Amended	1765	
302 KAR 20:240	1795		401 KAR 63:100		
As Amended	2363		Amended	1770	
302 KAR 31:040	795		401 KAR 63:104	1798	
Withdrawn		11-19-97	401 KAR 63:541	1800	
Resubmitted	2243		401 KAR 63:560	1801	
302 KAR 40:010			401 KAR 63:640	1803	
As Amended	1062	11-12-97	401 KAR 63:680	1805	
401 KAR 5:001			401 KAR 63:741	1806	
Amended	1547	4-13-98	401 KAR 63:780	1808	
Expired		4-15-98	401 KAR 63:800	1810	
401 KAR 5:008	1585		401 KAR 63:820	1811	
Amended	1899	4-13-98	401 KAR 63:900	1813	
Expired		4-15-98	401 KAR 63:920	1814	
401 KAR 8:030			401 KAR 63:940	1816	
As Amended	70		401 KAR 63:960	1818	
As Amended	332		401 KAR 65:010		
401 KAR 46:005	221		Amended	656	
Died*		9-12-97	Amended	1302	1-12-98
401 KAR 46:010	223		402 KAR 4:010		
Died*		9-12-97	Expired		4-15-98
401 KAR 46:020	225		402 KAR 4:020		
Died*		9-12-97	Expired		4-15-98
401 KAR 46:030	228		402 KAR 4:030		
Died*		9-12-97	Expired		4-15-98
401 KAR 46:040	230		402 KAR 4:035		
Died*		9-12-97	Expired		4-15-98
401 KAR 46:050	234		402 KAR 4:040		
Died*		9-12-97	Expired		4-15-98
401 KAR 46:060			402 KAR 4:050		
Amended	142		Expired		4-15-98
Died*		9-12-97	402 KAR 4:060		
401 KAR 46:070			Expired		4-15-98
Amended	145		402 KAR 4:070		
Died*		9-12-97	Expired		4-15-98
401 KAR 47:150			402 KAR 4:080		
Amended	149		Expired		4-15-98
Died*		9-12-97	402 KAR 4:090		
			Expired		4-15-98

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
402 KAR 4:100			500 KAR 11:090		
Expired		4-15-98	Amended	155	
402 KAR 4:110			As Amended	874	
Expired		4-15-98	Expired		4-15-98
402 KAR 4:120			501 KAR 1:030		
Expired		4-15-98	Amended	2143	
402 KAR 4:130			501 KAR 6:020		
Expired		4-15-98	As Amended	569	9-15-97
402 KAR 4:140			Amended	755	
Expired		4-15-98	Withdrawn		11-10-97
402 KAR 4:150			Amended	1361	
Expired		4-15-98	As Amended	1873	3-16-98
402 KAR 4:160			Amended	2149	
Expired		4-15-98	501 KAR 6:030		
402 KAR 4:170			Amended	1364	3-16-98
Expired		4-15-98	501 KAR 6:040		
402 KAR 4:180			Amended	935	12-15-97
Expired		4-15-98	Amended	1366	3-16-98
402 KAR 4:190			501 KAR 6:050		
Expired		4-15-98	Amended	156	9-15-97
402 KAR 4:200			501 KAR 6:060		
Expired		4-15-98	Amended	1134	2-17-98
405 KAR 8:001			501 KAR 6:080		
Amended	667		Amended	2152	
405 KAR 8:030			501 KAR 6:090		
Amended	675		Amended	757	12-15-97
Amended	1313		Amended	1367	3-16-98
405 KAR 8:040			501 KAR 6:110		
Amended	687		Amended	396	9-16-97
Amended	1325		Amended	1368	
405 KAR 16:001			As Amended	1875	3-16-98
Amended	704		501 KAR 6:120		
405 KAR 16:060			Amended	1370	
Amended	710		As Amended	1876	3-16-98
Amended	1341		Amended	1929	
405 KAR 16:090			501 KAR 6:170		
Amended	716		Amended	1136	
405 KAR 16:100			As Amended	1506	1-12-98
Amended	719		Amended	1372	3-16-98
405 KAR 16:160			501 KAR 6:180		
Amended	723		As Amended	1597	
405 KAR 18:001			As Amended	1878	3-16-98
Amended	725		501 KAR 6:999	1431	
405 KAR 18:060			As Amended	1879	3-16-98
Amended	732		Amended	1932	
Amended	1347		502 KAR 31:010	429	
405 KAR 18:090			Withdrawn		10-13-97
Amended	738		502 KAR 45:145		
405 KAR 18:100			Amended	759	
Amended	741		As Amended	1076	11-14-97
405 KAR 18:160			505 KAR 1:020	236	
Amended	745		As Amended	572	9-15-97
405 KAR 18:210			505 KAR 1:040	1598	4-13-98
Amended	747		600 KAR 4:010		
500 KAR 11:001			Amended	1559	
Amended	151		As Amended	1880	2-19-98
As Amended	871	9-12-97	600 KAR 6:010		
500 KAR 11:025			Amended	1373	
Amended	152		Amended	1689	2-19-98
As Amended	873	9-12-97	600 KAR 6:040		
500 KAR 11:080			Amended	1375	
Amended	154		Amended	1691	2-19-98
As Amended	874	9-12-97	600 KAR 6:070		
			Amended	1378	
			Amended	1693	2-19-98

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
601 KAR 1:005			704 KAR 20:045		
Amended	1932		Amended	1946	
Amended	2392		As Amended	2371	
601 KAR 1:025			704 KAR 20:060		
Amended	1384		Amended	1947	
Amended	1699	2-19-98	As Amended	2372	
601 KAR 1:146	1183		704 KAR 20:082	2481	
Amended	1524		704 KAR 20:084		
As Amended	2365		Amended	937	
601 KAR 1:147	1185		As Amended	1245	12-4-97
Amended	1525		704 KAR 20:165		
As Amended	2366		Amended	176	
601 KAR 9:135			As Amended	574	9-4-97
Amended	398		704 KAR 20:210		
Amended	909	11-4-97	Amended	1140	
601 KAR 11:040			As Amended	1507	1-12-98
Amended	1387		704 KAR 20:305		
Amended	1702	2-19-98	Amended	1141	
603 KAR 3:080			As Amended	1508	1-12-98
Amended	157		704 KAR 20:420		
Amended	612		Amended	1949	
As Amended	875		As Amended	2373	
As Amended	1076	10-7-97	704 KAR 20:475		
603 KAR 4:040			Amended	1950	
Amended	1936		As Amended	2374	
Amended	2395		704 KAR 20:670		
603 KAR 5:050			Amended	404	
Amended	403	10-2-97	As Amended	892	10-2-97
603 KAR 5:070			Amended	2426	
Amended	1390		704 KAR 20:696		
As Amended	1671	1-22-98	Amended	1952	
603 KAR 5:230			704 KAR 20:700		
Amended	1137		Amended	1958	
Amended	1527		As Amended	2375	
As Amended	1675	1-22-98	704 KAR 20:710		
701 KAR 5:110			Amended	177	
Amended	2425		As Amended	575	9-4-97
702 KAR 3:110			725 KAR 2:080	2482	
Amended	1565		750 KAR 2:010		
As Amended	2118	4-13-98	Amended	179	
702 KAR 7:065			As Amended	576	9-4-97
Amended	174		780 KAR 2:130		
As Amended	573	9-4-97	Repealed by 780-2:131	1678	2-17-98
703 KAR 3:060			780 KAR 2:131	1432	
Amended	1566		As Amended	1678	2-17-98
As Amended	2118	4-13-98	780 KAR 3:070		
703 KAR 4:110			As Amended	1237	
Amended	1570		Withdrawn		12-2-97
As Amended	2122	4-13-98	780 KAR 3:080		
704 KAR 3:303			As Amended	1253	
Amended	1941		Withdrawn		12-2-97
Amended	2401		780 KAR 6:060		
704 KAR 3:455			As Amended	1255	12-4-97
Amended	760		781 KAR 1:020		
As Amended	1093	11-6-97	Amended	2429	
704 KAR 7:130	238	9-4-97	781 KAR 1:040		
704 KAR 20:015			Amended	2433	
Amended	1942		785 KAR 1:010		
As Amended	2368		Amended	407	
704 KAR 20:021			As Amended	894	10-2-97
Amended	1944		785 KAR 1:020		
As Amended	2369		Amended	409	
704 KAR 20:022	2040		As Amended	895	10-2-97
As Amended	2370				

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
787 KAR 1:200			807 KAR 5:063		
Amended	1144		As Amended	367	
As Amended	1510	1-12-98	As Amended	896	8-27-97
803 KAR 2:060			807 KAR 5:069		
Amended	1145		Amended	1774	
As Amended	1510	1-12-98	As Amended	2122	4-13-98
803 KAR 2:301			808 KAR 10:010		
Amended	1148	1-12-98	Amended	2172	
Amended	2152		808 KAR 10:020		
803 KAR 2:320			Amended	2173	
Amended	1150		808 KAR 10:030		
As Amended	1512	1-12-98	Amended	2174	
Amended	2154		808 KAR 10:040		
803 KAR 2:403			Amended	2176	
Amended	1156	1-12-98	808 KAR 10:080		
803 KAR 2:411			Amended	2177	
Amended	1158		808 KAR 10:090		
As Amended	1518		Amended	2178	
803 KAR 2:425			808 KAR 10:110		
Amended	1159	1-12-98	Amended	2179	
803 KAR 2:500			808 KAR 10:130		
Amended	1161	1-12-98	Amended	2180	
Amended	2160		808 KAR 10:141		
803 KAR 3:050			808 KAR 10:150		
Amended	2163		Amended	2181	
803 KAR 25:010			808 KAR 10:160		
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