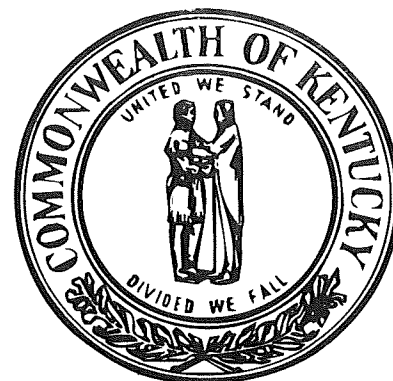


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 3
TUESDAY, SEPTEMBER 1, 1998

September Agenda, ARRS	503
Regulation Review Procedure	507

NOTICES OF INTENT:

Kentucky Legislative Ethics Commission	508
Executive Branch Ethics Commission	509
Secretary of State	512
Office of Attorney General	512
Revenue Cabinet	514
Finance and Administration Cabinet	515
Real Estate Commission	516
Commission on Military Affairs	517
Fish and wildlife	518
Justice Cabinet - Department of Corrections	519
Justice Cabinet - Ky. Law Enforcement Council	520
Transportation Cabinet	623
Department of Education	524
Education Professional Standards Board	529
Morehead State University	529
Department of Insurance	530
Department of Financial Institutions	531
Department of Housing, Buildings and Construction	531
Cabinet for Health Services	533

EMERGENCIES:

Secretary of State	539
Office of Attorney General	540
Revenue Cabinet	546
Finance and Administration Cabinet	548
Department of Fish and wildlife Resources	551
Department of Education	555
Education Professional Standards Board	558
Department of Insurance	560

AS AMENDED:

Transportation Cabinet	565
Workforce Development Cabinet	566
Cabinet for Health Services	566

AMENDED AFTER HEARING:

Kentucky Lottery Corporation	584
Cabinet for Health Services	585

PROPOSED AMENDMENTS RECEIVED THROUGH NOON,

AUGUST 13, 1998:

Kentucky Retirement System	589
Board of Dentistry	590
Board of Embalmers and Funeral Directors	592

Board of Nursing	592
Department of Fish and Wildlife Resources	600
NREPC - Air Quality	603
Justice Cabinet - Parole Board	607
Justice Cabinet - Department of Corrections	611
Justice Cabinet - Ky. Law Enforcement Council	613
Transportation Cabinet	615
Board of Education	617
Education Professional Standards Board	619
Cabinets for Health Services, and Families and Children	620

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 14, 1998:

Revenue Cabinet	677
Board of Nursing Home Administrators	678
Board of Medical Licensure	687
Board of Nursing	689
NREPC - Water	690
NREPC - Air Quality	711
Justice Cabinet - Department of Corrections	713
Department of Libraries and Archives	714
Department of Alcoholic Beverage Control	716
Department of Insurance	718
Cabinets for Health Services, and Families and Children	721

August 4, 1998 Minutes of the ARRS	739
Other Committee Reports	None

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	C2
KRS Index	C9
Subject Index	C13

MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on September 8, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 503-506 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1998 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 25, Kentucky Register, page 318 (short form: 25 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:	155
Cabinet, Department, Board or Agency		Office, Division, or Major Function	Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 1998 Legislative Research Commission, All Rights Reserved

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. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Larry Saunders
Senate President

Representative Jody Richards
House Speaker

Senate and House Members

Senator Walter Blevins, Jr.
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator David K. Karem
Majority Floor Leader

Representative Gregory D. Stumbo
Majority Floor Leader

Senator Dan Kelly
Minority Floor Leader

Representative Danny R. Ford
Minority Floor Leader

Senator Nick Kafoglis
Majority Caucus Chairman

Representative Jim Callahan
Majority Caucus Chairman

Senator Richard L. "Dick" Roeding
Minority Caucus Chairman

Representative Stan Cave
Minority Caucus Chairman

Senator Fred Bradley
Majority Whip

Representative Joe Barrows
Majority Whip

Senator Elizabeth Tori
Minority Whip

Representative Woody Allen
Minority Whip

Don Cetrulo, Jr. Director

Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative John A. Arnold, Jr., Chairman
Senator Nick Kafoglis
Senator Joey Pendleton
Senator Richard L. "Dick" Roeding
Representative Woody Allen
Representative Jim Bruce
Representative Jimmie Lee

Staff

Susan Eastman
Gregory Karambellas
Donna Little
Stephen Lynn
Angela Phillips
Donna Valencia
Susan Wunderlich

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – September 8, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment

Kentucky Higher Education Assistance Authority

11 KAR 4:050. Setoff of authority claims

11 KAR 4:070. Reports by postsecondary institutions

Division of Student Services

KHEAA Grant Programs

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5

Kentucky Educational Savings Plan Trust

11 KAR 12:010. Kentucky Educational Savings Plan Trust definitions

11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements

11 KAR 12:060. Cancellation and payment of refund

11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

Osteopath Scholarship Program

11 KAR 14:010. Osteopathic Medicine Scholarship Program application process

11 KAR 14:020. Osteopathic Medicine Scholarship Program award determination

11 KAR 14:030. Osteopathic Medicine Scholarship Program disbursement process

11 KAR 14:040. Osteopathic Medicine Scholarship Program overawards and refunds

11 KAR 14:050. Osteopathic Medicine Scholarship Program records and regulations

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments

11 KAR 14:070. Osteopathic Medicine Scholarship Program notifications

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment

Commonwealth Merit Scholarship Program

11 KAR 15:010. Definitions

11 KAR 15:020. Student eligibility report

11 KAR 15:030. Dual enrollment under consortium agreement

11 KAR 15:040. Commonwealth merit scholarship award determination procedure

11 KAR 15:050. Disbursement

11 KAR 15:060. Commonwealth merit scholarship overaward and refund and repayment procedure

11 KAR 15:070. Records and reports

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:120E. Additional precinct officers. (Deferred from July)

31 KAR 4:130E. Submitting Absentee Ballot Application by facsimile. (Deferred from August)

PERSONNEL BOARD

Board

101 KAR 1:325. Probationary periods

KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

General Rules

105 KAR 1:170E. Membership form requirements

105 KAR 1:230E. Reemployment after retirement

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

Property

200 KAR 6:060E. Lease of new construction

Office of Financial Management and Economic Analysis

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010 & E. Formula for allocation of private activity bonds

GENERAL GOVERNMENT CABINET

Board of Dentistry

201 KAR 8:440. Fee schedule

Board of Examiners of Psychologists

201 KAR 26:121. Scope of practice

201 KAR 26:125. Health service provider designation

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.

201 KAR 26:215. Nonresident status

Board of Certification for Professional Art Therapists

201 KAR 34:030. Continuing education requirements

201 KAR 34:040. Code of ethics

Board of Certification for Professional Counselors

201 KAR 36:020. Fees – renewal date

201 KAR 36:030. Continuing education requirements

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

201 KAR 36:040. Code of ethics

201 KAR 36:050. Complaint management process

KENTUCKY LOTTERY CORPORATION

Lottery

202 KAR 3:030. Retailer regulations. (Public Hearing in July)

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources**

Fish

301 KAR 1:090. Bow fishing

301 KAR 1:155. Commercial fishing requirements

301 KAR 1:201. Fishing limits

Game

301 KAR 2:179. State park deer hunts

**DEPARTMENT OF AGRICULTURE
Division of Animal Health**

Livestock Sanitation

302 KAR 20:040 & E. Entry into Kentucky

302 KAR 20:051. Domestic livestock, poultry and fish composting

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

Water Quality

401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5. (Deferred from July)

401 KAR 5:009E. Permits for swine feeding operations. (Deferred from July)

**JUSTICE CABINET
Department of Corrections**

Kentucky Parole Board

501 KAR 1:030E. Determining parole eligibility

501 KAR 1:050E. Granting final discharge from parole

Class D Felons

501 KAR 2:070E. Work release.

Office of the Secretary

501 KAR 6:020E. Corrections policies and procedures

501 KAR 6:040. Kentucky State Penitentiary. (Deferred from August)

501 KAR 6:110. Roederer Correctional Complex. (Deferred from August)

Execution Hearings

501 KAR 8:011. Repeal of 501 KAR 8:010.

Psychiatric or Forensic Psychiatric Facility Victim Notification System

501 KAR 14:010E. Psychiatric or Forensic Psychiatric Facility Victim Notification System

Department of State Police

Sex Offender Registration System

502 KAR 31:020E. Sex offender registration system

TRANSPORTATION CABINET

Professional Engineering and Related Services (Deferred from August)

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services. (Not Amended After Hearing)

600 KAR 6:060. Professional engineering service selection committee. (Not Amended After Hearing)

600 KAR 6:080. Financial records and audits of firms. (Amended After Hearing)

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles

601 KAR 1:140. U-drive-it permit application procedures

601 KAR 1:145. Reporting and paying of usage tax pursuant to a U-drive-it permit

Department of Fiscal Management

Division of Audit Review

Motor Vehicle Tax

601 KAR 9:135. Apportioned registration

Department of Highways

Mass Transportation

603 KAR 7:080E. Human service transportation delivery. (Deferred from August)

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. (Deferred from August)

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Education Professional Standards Board

Board

704 KAR 20:305. Written examination prerequisites for teacher certification
Commission on the Deaf and Hard of Hearing

Interpreter Referral Services

735 KAR 2:010E. Definitions
735 KAR 2:020E. KCDHH Interpreter Referral Services Program parameters
735 KAR 2:030E. Interpreter qualifications
735 KAR 2:040E. Interpreter protocols
735 KAR 2:050E. Processing of requests for services
735 KAR 2:060E. Grievance procedures

**FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission**

Education Technology Funding Program

750 KAR 2:010E. Education Technology Funding Program guidelines

**CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation**

Administration

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services. (Not Amended After Hearing) (Deferred from August)

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center
Department for the Blind

Blind (Deferred from August)

782 KAR 1:030. Scope and nature of services.
782 KAR 1:040. Appeal procedures.

Department for Employment Services

Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate
Kentucky Assistive Technology Loan Corporation

Corporation

789 KAR 1:010. General eligibility criteria for assistive technology loans. (Not Amended After Hearing)

**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Board of Tax Appeals**

Tax Appeals

802 KAR 1:010. Rules of practice and procedure

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 2:306E. Occupational health and environmental control
803 KAR 2:307E. Hazardous materials
803 KAR 2:308E. Personal protective equipment
803 KAR 2:311E. Fire protection
803 KAR 2:316E. Welding, cutting, and brazing
803 KAR 2:317E. Special industries
803 KAR 2:320E. Air contaminants
803 KAR 2:403E. Occupational health and environmental controls
803 KAR 2:404E. Personal protective and life saving equipment
803 KAR 2:418E. Underground construction, caissons, cofferdams, and compressed air
803 KAR 2:425E. Toxic and hazardous substances

Office of Labor Management Relations and Mediation

Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program. (Deferred from July)

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance**

Authorization of Insurers and General Requirements

806 KAR 3:131. Repeal of 806 KAR 3:130

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:241. Repeal of 806 KAR 9:240

Health Insurance Contracts

806 KAR 17:141E. Repeal of 806 KAR 17:140. (Will Not Be Replaced by Ordinary) (Deferred from July)
806 KAR 17:150E. Health benefit plan rate filing requirements. (Deferred from July)
806 KAR 17:160E. Creditable coverage for health insurance
806 KAR 17:180E. Standard health benefit plan and comparison format
806 KAR 17:190E. Guaranteed Acceptance Program requirements
806 KAR 17:200E. Severity codes for high-cost conditions
806 KAR 17:210E. Reporting requirements for the Kentucky Guaranteed Acceptance Program
806 KAR 17:220E. Approval criteria and requirements for reentry into the Kentucky health insurance market

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Motor Vehicle Repairs (No-fault)

806 KAR 39:081. Repeal of 806 KAR 39:080

Kentucky Racing Commission

Thoroughbred Racing (Deferred from June)

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

Harness Racing (Deferred from June)

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

CABINET FOR HEALTH SERVICES

Department for Public Health

Department for Public Health

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 2:018E. Transportation services for Kentucky Works. (Deferred from August)

904 KAR 2:380E. Child Support Enforcement Program application process. (Deferred from August)

904 KAR 2:490E. Welfare to Work Grant Program

Department for Social Services

Division of Family Services

Day Care

905 KAR 2:160E. Child day care assistance program. (Deferred from July)

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Administration and Development

Medicaid Services

907 KAR 1:006 & E. Coverage for persons eligible for Title XVIII benefits.

907 KAR 1:011 & E. Technical eligibility requirements

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

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services

907 KAR 1:026E. Dental services. (Deferred from July)

907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility. (Deferred from May)

907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients. (Deferred from May)

907 KAR 1:595. Model Waiver II services and payments. (Public Hearing in June)

907 KAR 1:605 & E. Medicaid procedures for determining initial and continuing eligibility

907 KAR 1:626E. Reimbursement of dental services. (Deferred from July)

907 KAR 1:640 & E. Income standards for Medicaid

907 KAR 1:645 & E. Resource standards for Medicaid

907 KAR 1:755E. Preadmission screening and resident review (PASRR) program. (Deferred from May)

Payment and Services

907 KAR 3:030 & E. Coverage and payments for Impact Plus services. (Public Hearing in June)

907 KAR 3:065E. Nonemergency medical transportation waiver services and payments. (Deferred from August)

Department for Mental Health and Mental Retardation Services

Substance Abuse

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. (Deferred from July)

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs. (Amended After Hearing) (Deferred from August)

Mental Health

908 KAR 2:210E. Domestic violence offender treatment certification standards. (Deferred from June)

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998
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.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, AUGUST 14, 1998

KENTUCKY LEGISLATIVE ETHICS COMMISSION

July 14, 1998

(1) **2 KAR 2:010**, Required forms.

(2) The Kentucky Legislative Ethics Commission intends to amend the "Legislative Agent/Employer Initial Registration Statement", the "Legislative Agent's Updated Registration Statement", the "Employer's Updated Registration Statement", the "Legislative Agent's Notice of Termination of Engagement", and the "Employer's Notice of Termination of Engagement".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 10 a.m., 22 Mill Creek Park, 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 September 30, 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. Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, (502) 573-2863, or fax (502) 573-2929.

(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 Legislative Ethics Commission at the address listed above.

(7) Information relating to the proposed amendments:

(a) The statutory authority for the amendment of the forms is KRS 6.807, 6.821, and 6.827.

(b) The administrative regulation that the Legislative Ethics Commission will amend is 2 KAR 2:010. It will reorganize and update the required forms.

(c) The necessity and function of the proposed amended form is as follows: KRS 6.807 requires each legislative agent and employer to file an initial registration statement, periodic updated registration statements, and a notice of termination of engagements. This administrative regulation incorporates by reference the required forms.

(d) The benefits expected from the proposed amendment are: Accurate and consistent reporting by legislative agents and employers.

(e) The administrative regulation will be implemented as follows: The current forms will be replaced and revised with new forms.

July 14, 1998

(1) **2 KAR 2:020**, Statement of financial disclosure.

(2) The Kentucky Legislative Ethics Commission intends to amend the "Statement of Financial Disclosure".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 10 a.m., 22 Mill Creek Park, 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 September 30, 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. Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, (502) 573-2863, or fax (502) 573-2929.

(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 Legislative Ethics Commission at the address listed above.

(7) Information relating to the proposed amendments:

(a) The statutory authority for the amendment of the forms is KRS 6.787.

(b) The administrative regulation that the Legislative Ethics Commission will amend is 2 KAR 2:020. It will reorganize and update the required forms.

(c) The necessity and function of the proposed amended form is as follows: KRS 6.781 requires members of the General Assembly and nominees for election to the General Assembly, and major management personnel in the Legislative branch of state government to file statements of financial disclosure. This administrative regulation establishes the required form.

(d) The benefits expected from the proposed amendment are: Accurate and consistent reporting on the financial disclosure statement.

(e) The administrative regulation will be implemented as follows: The current forms will be replaced and revised with new forms.

July 14, 1998

(1) **2 KAR 2:030**, Rules of procedure.

(2) The Kentucky Legislative Ethics Commission intends to repeal 2 KAR 2:030.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 10 a.m., 22 Mill Creek Park, 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.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(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 September 30, 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. Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, (502) 573-2863, or fax (502) 573-2929.

(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 Legislative Ethics Commission at the address listed above.

(7) Information relating to the proposed amendments:

(a) The statutory authority for the repeal of the amendment is KRS 13A.120(2)(f).

(b) The administrative regulation that the Legislative Ethics Commission will amend is 2 KAR 2:030. It will repeal the current rules of procedure which are duplicative and prohibited by law.

(c) The necessity and function of the proposed amendment is as follows: KRS 6.686 establishes the complaint and preliminary investigations procedures to be followed by the commission. KRS 6.691 establishes the commission's adjudicatory proceedings. KRS 13A.120(2)(f) prohibits the promulgation of an administrative regulation if a statute establishes a comprehensive scheme of regulation of a subject matter. This administrative regulation is repealed because it is not required and is prohibited by the provisions of KRS Chapter 13.

(d) The benefit expected from the proposed amendment is: Elimination of the rules of procedure which are prohibited by law.

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

July 14, 1998

(1) **2 KAR 2:040**, Updated registration short forms for employers and legislative agents.

(2) The Kentucky Legislative Ethics Commission intends to amend the "Legislative Agent's Updated Registration Statement, Short Form" and the "Employer's Updated Registration Statement, Short Form".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 10 a.m., 22 Mill Creek Park, 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 September 30, 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. Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, (502) 573-2863, or fax (502) 573-2929.

(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 Legislative Ethics Commission at the address listed above.

(7) Information relating to the proposed amendments:

(a) The statutory authority for the amendment of the forms is KRS 6.666(5) and (6).

(b) The administrative regulation that the Legislative Ethics Commission will amend is 2 KAR 2:040. It will reorganize and update the required forms.

(c) The necessity and function of the proposed amended form is as follows: KRS 6.807(3) requires each legislative agent and employer to file periodic updated registration statements. There are reporting periods in which there are no expenditures or expenses to be reported. This administrative regulation establishes the short forms to be used by employers and legislative agents if there are no expenditures to be reported.

(d) The benefits expected from the proposed amendment are: Less paperwork for legislative agents and employers and commission staff.

(e) The administrative regulation will be implemented as follows: The current forms will be replaced and revised with new forms.

EXECUTIVE BRANCH ETHICS COMMISSION

July 16, 1998

(1) Regulation number and title: **9 KAR 1:010**, Statement of financial disclosure.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.

(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 a person who desires to be informed of the intent of an administrative body to amend an existing 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 Executive Branch Ethics Commission at the address listed above.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:010, Statement of financial disclosure, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation prescribes the forms for filing statements of financial disclosure.

(c) The necessity and function of the amendment is as follows: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7), public servant as listed in KRS 11A.010(9), and candidate for the public offices listed in KRS 11A.010(9) file a statement of financial disclosure with the commission. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This regulation prescribes the forms for filing statements of financial disclosure and incorporates it by reference.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

July 16, 1998

(1) Regulation number and title: **9 KAR 1:015**, Preadjudicatory proceedings.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.

(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 a person who desires to be informed of the intent of an administrative body to amend an existing 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 Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:015, Preadjudicatory proceedings, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes procedures relating to investigations that are not established by KRS Chapter 11A.

(c) The necessity and function of the amendment is as follows: KRS 11A.080 requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes a number of procedures for the filing of complaints and commission investigations. In order to implement the investigation of complaints mandated by KRS 11A.080, this administrative regulation establishes procedures relating to investigations that are not established by KRS Chapter 11A.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

July 16, 1998

(1) Regulation number and title: **9 KAR 1:030**, Adjudicatory proceedings.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.

(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 a person who desires to be informed of the intent of an administrative body to amend an existing 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 Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:030 Adjudicatory proceedings, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes the procedures governing adjudicatory proceedings.

(c) The necessity and function of the amendment is as follows: KRS 11A.080(4)(b) gives the commission the authority to initiate an administrative hearing to determine whether there has been a violation. This regulation establishes the procedures governing administrative proceedings.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this regulation.

July 16, 1998

(1) Regulation number and title: **9 KAR 1:036**, Repeal of 9 KAR 1:035, Posthearing procedure.

(2) The Executive Branch Ethics Commission intends to repeal an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.

(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 a person who desires to be informed of the intent of an administrative body to repeal an existing 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 Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for repeal of an administrative regulation relating to 9 KAR 1:036 Repeal of 9 KAR 1:035, Posthearing procedure, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to repeal is an existing administrative regulation. The existing administrative regulation sets forth posthearing procedure for adjudicatory proceedings held by the commission. The existing administrative regulation is no longer needed since KRS Chapter 13B addresses posthearing procedure.

(c) The necessity and function of the amendment is as follows: The existing administrative regulation sets forth posthearing procedure for adjudicatory proceedings held by the commission. The existing administrative regulation is no longer needed since KRS Chapter 13B addresses posthearing procedure.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

July 16, 1998

(1) Regulation number and title: **9 KAR 1:040**, Initial and updated registration statements and registration cards for executive agency lobbyists employers, expenditure statements, financial disclosure forms, termination forms, and Executive Agency Lobbying Handbook.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.

(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 a person who desires to be informed of the intent of an administrative body to amend an existing 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 Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:040, Initial and updated registration statements and registration cards for executive agency lobbyists and lobbyist employers, expenditure statements, financial disclosure forms, termination forms, and Executive Agency Lobbying Handbook, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes forms and handbooks required by KRS Chapter 11A.

(c) The necessity and function of the amendment is as follows: KRS 11A.241(4) requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes these forms. KRS 11A.241(6) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to KRS 11A.246. This administrative regulation establishes that handbook.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

July 16, 1998

- (1) Regulation number and title: **9 KAR 1:050**, Approval of outside employment of a public servant.
- (2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Thursday, September 24, 1998, at 1 p.m. in Room 273, Capitol Annex, 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 September 24, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954, fax: (502) 564-2686.
- (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 a person who desires to be informed of the intent of an administrative body to amend an existing 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 Executive Branch Ethics Commission at the address listed above.
- (7) Information relating to the existing administrative regulation.
- (a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:050, Approval of outside employment of a public servant, is KRS 11A.110(3).
- (b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes procedure for approval of outside employment of a public servant as required by KRS 11A.040(9).
- (c) The necessity and function of the amendment is as follows: KRS 11A.040(9) requires the appointing authority to review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
- (d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 1998 General Assembly.
- (e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission is responsible for implementing this administrative regulation.

**DEPARTMENT OF STATE
Secretary of State**

July 15, 1998

- (1) **30 KAR 4:010**, Kentucky Lien Information System.
- (2) The Secretary of State 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 September 22, 1998 at 9 a.m. at the Secretary of State's Office, 700 Capital Avenue, Suite 152 State Capitol, 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 September 22, 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: Maryellen B. Allen, Division Director/General Counsel, 700 Capital Avenue, Suite 152 State Capitol, Frankfort, Kentucky 40601, (502) 564-3490, fax no. (502) 564-5687.
- (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 Secretary of State's Office 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 Kentucky Lien Information System is 1998 Ky. Acts ch. 542.
- (b) The administrative regulation that the Secretary of State intends to promulgate will set forth how an individual's identification number will be assigned if it is other than the individual's Social Security number. It will also prescribe the form for all statements to be filed pursuant to 1998 Ky. Acts ch. 542 and when the obligation to file with the Secretary of State begins.
- (c) The necessity and function of the proposed administrative regulation is 1998 Ky. Acts ch. 542 requires the Secretary of State to promulgate an administrative regulation setting forth how an individual's identification number is designated and the form for filing financing statements and related statements.
- (d) The benefits expected from the administrative regulation are: Implement the statute that creates the Kentucky Lien Information System.
- (e) The administrative regulation will be implemented as follows: The Secretary of State will follow the procedure set forth in the administrative regulation.

**OFFICE OF THE ATTORNEY GENERAL
Department of Law**

July 15, 1998

- (1) **40 KAR 2:070**, Procedures for registration of telephone solicitation merchants.
- (2) The Attorney General's Office intends to promulgate an administrative regulation governing the subject matter list above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 1998 at 11 a.m., Honorable Todd Leatherman, Director, Consumer Protection Division, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone number (502) 696-5389 and fax number (502) 573-8317.

VOLUME 25, NUMBER 3 -- SEPTEMBER 1, 1998

- (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 10 days prior to September 24, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Todd Leatherman, Director, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General at the address above.
- (7) Information relating to the proposed administrative regulation:
- (a) That statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 15.180, 367.150, 367.46983.
- (b) The administrative regulation that the Attorney General's Office intends to promulgate will amend 40 KAR 2:070 an existing administrative regulation. It will amend the procedures for registration of telephone solicitation merchants.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. This administrative regulation establishes procedures for registration of telephone solicitation merchants.
- (d) The benefits expected from the administrative regulation are: The public will be protected in that the rights granted by the bill will be enforced and that a clear statement of the standards will be set forth for the telemarketing companies.
- (e) The administrative regulation will be implemented as follows: Information required by statute will be collected and reviewed for compliance.

July 15, 1998

- (1) **40 KAR 2:075**, Commonwealth of Kentucky, No Telephone Solicitation Calls List.
- (2) The Attorney General's Office intends to promulgate an administrative regulation governing the subject matter list above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 1998 at 11 a.m., Honorable Todd Leatherman, Director, Consumer Protection Division, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone number (502) 696-5389 and fax number (502) 573-8317.
- (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 10 days prior to September 24, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Todd Leatherman, Director, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General at the address above.
- (7) Information relating to the proposed administrative regulation:
- (a) That statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 15.180, 367.150, 367.46983.
- (b) The administrative regulation that the Attorney General's Office intends to promulgate will not amend an existing administrative regulation. It will develop the procedures for placement on and request of the no telephone solicitation calls list.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. Section 3(15) of 1998 Ky. Acts ch. 581, requires the Office of the Attorney General to establish fees to defray the cost of the no telephone solicitation calls program established by 1998 Ky. Acts ch. 581, and a no telephone solicitation calls list. This administrative regulation establishes the fees and the notification procedure.
- (d) The benefits expected from the administrative regulation are as follows: The public will be protected in that the rights granted by the bill will be enforced and that a clear statement of the standards will be set forth for the telemarketing companies.
- (e) The administrative regulation will be implemented as follows: Information required by statute will be collected and reviewed for compliance.

July 15, 1998

- (1) **40 KAR 2:076**, Procedures and notification of violations of 1998 Ky. Acts ch. 581, sec. 3(1)-(14), and (16).
- (2) The Attorney General's Office intends to promulgate an administrative regulation governing the subject matter list above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 1998 at 11 a.m., Honorable Todd Leatherman, Director, Consumer Protection Division, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone number (502) 696-5389 and fax number (502) 573-8317.
- (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 10 days prior to September 24, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Todd Leatherman, Director, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(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 Office of the Attorney General at the address above.

(7) Information relating to the proposed administrative regulation:

(a) That statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 15.180, 367.150, 367.46983.

(b) The administrative regulation that the Attorney General's Office intends to promulgate will not amend an existing administrative regulation. This administrative regulation establishes requirements relating to the enactment and enforcement of the prohibited telephone solicitation act or practice.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. 1998 Ky. Acts ch. 581, sec. 3(1)-(14), and (16) establishes prohibited telephone solicitation acts or practices for any telemarketing company. This administrative regulation establishes requirements relating to the enactment and enforcement of the prohibited telephone solicitation act or practice.

(d) The benefits expected from the administrative regulation are as follows: The public will be protected in that the rights granted by the bill will be enforced and that a clear statement of the standards will be set forth for the telemarketing companies.

(e) The administrative regulation will be implemented as follows: Information required by statute will be collected and reviewed for compliance.

July 15, 1998

(1) Regulation number and title; or subject matter if new: **40 KAR 6:010E**, Kentucky Victim and Witness Protection Program.

(2) The Department of Law, Office of the Attorney General, 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 September 24, 1998, at 9 a.m., at the Department of Law, Office of the Attorney General, 1024 Capital Center Drive, 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David H. MacKnight, Deputy Attorney General, Department of Law, Office of the Attorney General, 700 Capitol Avenue, Suite 118, 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 Law, Office of the Attorney General 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 the administrative regulation is KRS 15.180, 1998 Ky. Acts ch. 606, sec. 50(1), (2), (6).

(b) The administrative regulation that the Department of Law, Office of the Attorney General, intends to promulgate will not amend an existing administrative regulation. Under the administrative regulation, a law enforcement agency that has provided protective services to crime victims or witnesses or their immediate family members who were at substantial risk of imminent serious physical injury may submit upon the recommendation of the prosecutor having jurisdiction over the investigation and prosecution of a criminal case, an application for reimbursement from the Victim and Witness Protection Program for the costs of the protective services provided.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 606, sec. 50 provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

(d) The benefits expected from administrative regulation are: Law enforcement agencies may receive funding to provide protective services to crime victims and witnesses and their immediate families who are at substantial risk of imminent serious physical injury.

(e) The administrative regulation will be implemented as follows: A law enforcement agency that has provided protective services to crime victims or witnesses or their immediate family members who were at substantial risk of imminent serious physical injury may submit upon the recommendation of the prosecutor having jurisdiction over the investigation and prosecution of a criminal case, an application for reimbursement from the Victim and Witness Protection Program for the costs of the protective services provided.

REVENUE CABINET
Department of Law
Division of Tax Policy

August 14, 1998

(1) **103 KAR 20:020** – Items of capital for corporation license tax.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1998, at 10 a.m., at Training Room A, 200 Fair Oaks 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 September 29, 1998, the public hearing will be cancelled.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jennifer C. Hays, Director, Kentucky Revenue Cabinet, Division of Compliance & Taxpayer Assistance, 200 Fair Oaks Lane, Station 50, Frankfort, Kentucky 40601, Telephone: (502) 564-5495, Fax: (502) 564-3392, E-mail: jhays@mail.state.ky.us.

(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 Revenue Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the administration of the corporation license tax is KRS 131.130(1).

(b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will define terms and explain the computation of capital.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 131.130(1) requires the cabinet to make administrative regulations for the administration of all tax laws. KRS 136.070 defines the term "capital" which includes the accounts of capital stock, surplus, advances by affiliated companies, intercompany accounts, and borrowed moneys. This administrative regulation will establish a definition for each item of capital and provide guidance for the implementation of KRS 136.070.

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

1. Improved corporate taxpayer education;
2. Fewer mistakes made by corporate taxpayers on returns filed; and
3. Fewer adjustments made by the cabinet to license tax returns filed.

(e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be incorporated into the instructions of Revenue Form 720, Kentucky Corporation Income and License Tax Return, and other publications issued by the Revenue Cabinet for taxable years beginning after December 31, 1998.

August 7, 1998

(1) **103 KAR 44:060E** - Motor vehicle usage tax valuation.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 28, 1998 at 10 a.m. at 200 Fair Oaks Lane, Third Floor, Training Room A, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 28, 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: Edward A. Mattingly, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone Number (502) 564-6843, Facsimile Number (502) 564-9565.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 138.460 and 131.130.

(b) The administrative regulation that the Revenue Cabinet intends to promulgate will establish the form and procedures required for the implementation of House Bill 74.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is specifically required by KRS 138.460 which prescribes the valuation of motor vehicles for motor vehicle usage tax and effective August 1, 1998, authorizes the Revenue Cabinet to promulgate regulations necessary to carry out the provisions of HB 74.

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

1. The Revenue Cabinet, county clerks, motor vehicle dealers and public will realize clear and consistent valuation procedures in the event a motor vehicle owner cannot provide an affidavit of total consideration given.
2. The Revenue Cabinet, county clerks, motor vehicle dealers and public will realize clear and consistent procedures in the application of rebates to a motor vehicle purchase.
3. Automotive price reference manuals for establishing retail price for will be prescribed.

(e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be incorporated into the valuation procedures for motor vehicle usage tax.

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

July 17, 1998

(1) **200 KAR 5:021**, Manual of policies and procedures.

(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 September 21, 1998, at 9 a.m. in Room 386, Capitol Annex, 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, and agreement to attend the public hearing, are not received from the required number of people at

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

least ten (10) calendar days prior to September 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: Donald R. Speer, Commissioner, Department for Administration, Finance and Administration Cabinet, Room 362 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-2317 - Phone, (502) 564-4279 - FAX.

(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 the request may obtain a request form from the Office of the Secretary at the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(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.045(2).

(b) The proposed regulation will amend the Finance and Administration Cabinet Manual of Policies and Procedures, BP-111-58-00, regarding types of purchases allowed using a state procurement card.

(c) The necessity and function of the proposed administrative regulation is as follows: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This amendment updates the Finance and Administration Cabinet Manual of Policies and Procedures, BO-111-58-00, Procurement Card Program, to reflect changes in the type of purchases allowed using the procurement card.

(d) The benefit expected from this proposed administrative regulation is as follows: Savings to the Commonwealth estimated at \$3-5 million for fiscal year 1999 and \$7-9 million for fiscal year 2000.

(e) This administrative regulation will be implemented by the Finance and Administration Cabinet operating by the updated policies and procedures.

KENTUCKY REAL ESTATE COMMISSION

August 12, 1998

(1) **201 KAR 11:230**, Mandatory continuing education.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 28, 1998, at 1 p.m., at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(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, provided that a minimum of 5 persons 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 September 28, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or written comments to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223; by fax at (502) 426-2717 or by phone (502) 425-4273.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 324.281.

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will amend an existing regulation and will allow all licensees (broker and associate) to be treated equally with regard to continuing education.

(c) The necessity and function of the proposed administrative regulation is as follows: To remove a regulatory inequity between brokers and associates for all first time licenses with regard to continuing education requirements.

(d) The benefits expected from administrative regulation are: The change will exempt those brokers obtaining their first and original license in Kentucky from obtaining continuing education for that calendar year and will clarify a current ambiguity and inequity between associates and brokers regarding continuing education for brokers receiving a license in Kentucky.

(e) The administrative regulation will be implemented as follows: The regulation will go into effect immediately upon approval.

August 12, 1998

(1) **201 KAR 11:400**, Agency disclosure requirements.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 28, 1998, at 1 p.m., at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(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, provided that a minimum of 5 persons 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 September 28, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or written comments to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223; by fax at (502) 426-2717, or by phone at (502) 425-4273.

(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 admin-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation are KRS 324.281 and House Bill 670 passed by General Assembly (not yet given a statute number.)

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will amend an existing regulation as provided in House Bill 670 and disclose the existence of an agency relationship that has not existed at the common law or by prior statute.

(c) The necessity and function of the proposed administrative regulation is as follows: The current regulation requires disclosure of all agency relationships in a real estate transaction. House bill 670 provides for creation of an agency relationship in Kentucky that has not previously existed.

(d) The benefits expected from administrative regulation are: To amend the regulation to allow for disclosure of an agency relationship that has previously not existed.

(e) The administrative regulation will be implemented as follows: The regulation will go into effect immediately upon approval.

August 12, 1998

(1) **201 KAR 11:410**, Broker duties pursuant to designated agency.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 28, 1998 at 1 p.m., at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(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, provided that a minimum of 5 persons agree 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 September 28, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or written comments to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate, Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223; by fax at (502) 426-2717 or by phone at (502) 425-4273.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 324.281, 324.160(3), and House Bill 670 passed by the General Assembly (not yet given a statute number.)

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will not amend an existing regulation. It will detail the duties of a broker engaged in a designated agency relationship.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify the duties of the broker in a designated agency relationship as contemplated in House Bill 670. Designated agency is an agency relationship between client and licensee which has not existed or been known at common law. The relationship involves licensees in the same real estate firm representing separate consumers. The licensees share common work space, administrative support personnel, phone and other communication devices which pose potential vulnerability to the agent's fiduciary obligations to his client if the principal broker does not take adequate supervisory steps in this regard. As the agents owe duties to the individual client (and not to the other agent's client), the principal broker is the only individual positioned to enact and enforce adequate preventive systems to avoid fiduciary breaches.

(d) The benefits expected from administrative regulation are: Establish duties of brokers to supervise when company utilizes in designated agency relationships by appointing separate licensees to represent separate parties to a transaction.

(e) The administrative regulation will be implemented as follows: The regulation will go into effect immediately upon approval.

KENTUCKY COMMISSION ON MILITARY AFFAIRS

August 12, 1998

(1) **202 KAR 5:010**, Community Grant Program.

(2) Kentucky Commission on Military Affairs 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 September 24, 1998, at 10 a.m. EDT, Suite 66 Wilkinson Blvd., 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kim Blitch, Executive Assistant, Kentucky Commission on Military Affairs, Suite 66 Wilkinson Boulevard, Frankfort, Kentucky 40601, (502)-564-0269 (phone), (502) 564-0273 (fax).

(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 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 Commission on Military Affairs 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 allocation of grant money is KRS 154.12-203.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(b) The administrative regulation that the Kentucky Commission on Military Affairs intends to promulgate will be a new administrative regulation, 202 KAR 5:010. It will establish the criteria and application necessary for community groups to request grant money.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 154.12-203 grants the Kentucky Commission on Military Affairs the authority to allocate grant money to qualified applicants to further the purposes of the commission as spelled out in KRS 154.12-203(2)(a) to (i). This administrative regulation is necessary to establish the criteria and application necessary for filing for grant money.

(d) The benefits expected from this administrative regulation are: The ability to grant money to community groups to further the directives outlined in KRS 154.12-203.

(e) This administrative regulation will be implemented by the Kentucky Commission on Military Affairs.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources**

March 6, 1998

(1) Regulation number and title: **301 KAR 2:181**, Quota deer hunt procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 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 is not received from the required number of people at least ten days prior to September 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400; FAX (502) 564-6508.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing deer hunting on wildlife management areas is KRS 150.025(1) and 150.620.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the process by which a person applies for a quota deer hunt and how he checks in at the hunt.

(c) The necessity and function of the proposed administrative regulation is to: Manage deer harvest and avoid unsafe hunter densities on wildlife management areas by limiting the number of participants in certain deer hunts.

(d) The benefits expected from the administrative regulation are better management of deer herds on wildlife management areas and a safer, more enjoyable hunting experience.

(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.

June 12, 1998

(1) Regulation number and title: **301 KAR 2:225**, Dove, wood duck, teal and other migratory game bird hunting.

(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 September 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 September 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. Phone (502) 564-3400; FAX (502) 564-6508.

(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 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 150.025(1) and 150.360(1).

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:225 as follows: It will establish hunting dates and shooting hours for the 1998 season for migratory game birds.

(c) The necessity and function of the proposed administrative regulation is to establish migratory game bird hunting seasons within U.S. Fish and Wildlife Service guidelines.

(d) The benefits expected from the administrative regulation are: Allowing controlled harvest of migratory game birds within sound conservation guidelines.

(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.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

July 15, 1998

- (1) Regulation number and title: **301 KAR 6:005**, Boat registration fees.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 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 is not received from the required number of people at least ten days prior to September 21, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400; FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation an administrative regulation governing boat registration fees is 1998 RS HB 717.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will move existing boat registration fees from statute to administrative regulation as authorized by 1998 RS HB 717. The amounts of the fees will remain unchanged.
 - (c) The necessity and function of the proposed administrative regulation is to establish boat registration fees.
 - (d) The benefits expected from the administrative regulation are continuing the boat registration system currently in place.
 - (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.

**JUSTICE CABINET
Department of Corrections**

August 13, 1998

- (1) Regulation number and title: **501 KAR 6:020**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 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 September 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, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:
 1. Code of ethics (CPP 3.1) is being added to set forth general standards of conduct, delineate the activities which constitute a conflict of interest, clarify the appropriate use of confidential information, and provide institutions for obtaining an ethical opinion.
 2. Holding of second jobs by corrections' employees (CPP 3.3) is being added to accurately reflect Correction's policy and set forth requirements for notifying Corrections of a second job.
 3. Sexual harassment (CPP 3.5) is a new policy which sets forth the policies and procedures for reporting and investigating a claim of sexual harassment.
 4. Criminal history checks on all personnel and the employment of exoffenders (CPP 3.6) is being established to add appropriate definitions, specify the offenses which shall preclude employment in certain positions and to require each applicant to fill out a gun control form.
 5. E-mail (CPP 6.5) is a new policy which sets forth the permissible and impermissible use of E-mail and the Internet and the procedures regarding disclosure of information.
 - (c) The necessity and function of the proposed administrative regulation is as follows:
 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
 2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating proce-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

dures.

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

Kentucky Law Enforcement Council

August 14, 1998

(1) Regulation number and title: **503 KAR 1:090**, Kentucky Law Enforcement Council - Approval of course curriculums.

(2) The Kentucky Law Enforcement Council 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(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 September 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: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

(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 Law Enforcement Council 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 15.330(g) and 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:090, as follows: Amend and add language to conform to current operating procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council 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 reflect current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

August 14, 1998

(1) Regulation Number and Title: **503 KAR 1:100**, Kentucky Law Enforcement Council - Certification of instructors.

(2) The Kentucky Law Enforcement Council 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(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 September 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: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

(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 Law Enforcement Council 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 15.330(g) and KRS 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:100, as follows: Specify additional requirements for specialized training areas; amend and add language to conform to current operating procedures; amend the number of years of continuous certification before an instructor may be certified for a period of five years.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council 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 reflect current operating procedures.

(e) This administrative regulation will be implemented as follows: Instructors of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

August 14, 1998

- (1) Regulation number and title: **503 KAR 3:005**, General training provision - definitions.
- (2) The Justice Cabinet, Department of Criminal Justice Training, 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.
- (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 September 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: Stephanie C. Bingham, Department of Criminal Justice Training, Funderburk Building - Room 208E, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.
- (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 Criminal Justice Training 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 Chapter 13A and 15A.160.
 - (b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will create 501 KAR 3:005, as follows: Add definitions necessary for the implementation of 503 KAR Chapter 3.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary. This administrative regulation updates operating procedures at the Department of Criminal Justice Training to comply with KRS Chapter 13A, to reflect current operating procedures, and to codify procedures as required by 1998 Ky. Acts ch. 606, sec. 98-110, and 117.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, sec. 98-110, and 117, and to reflect current operating procedures.
 - (e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

August 14, 1998

- (1) Regulation number and title: **503 KAR 3:010**, General training provision - basic law enforcement training course trainee conduct requirements; procedures and penalties.
- (2) The Justice Cabinet, Department of Criminal Justice Training, 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.
- (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 September 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: Stephanie C. Bingham, Department of Criminal Justice Training, Funderburk Building - Room 208E, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.
- (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 Criminal Justice Training 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 Chapter 13A and 15A.160.
 - (b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will amend 501 KAR 3:010, as follows: Establish criteria for participation including required uniforms and operator's license; establishing criteria for removing unqualified trainees; updating limitations on gifts from trainees to staff; updating penalty levels for misconduct; updating summary action provision; updating conduct requirements and disciplinary procedures.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary. This administrative regulation updates operating procedures at the Department of Criminal Justice Training to comply with KRS Chapter 13A, to reflect current operating procedures, and to codify procedures as required by 1998 Ky. Acts ch. 606, sec. 98-110, and 117.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, sec. 98-110, and 117, and to reflect current operating procedures.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

August 14, 1998

(1) Regulation number and title: **503 KAR 3:020**, General training provision - in-service law enforcement training course trainee conduct requirements; procedures and penalties.

(2) The Justice Cabinet, Department of Criminal Justice Training, 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(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 September 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: Stephanie C. Bingham, Department of Criminal Justice Training, Funderburk Building - Room 208E, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

(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 Criminal Justice Training 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 Chapter 13A and 15A.160.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will amend 501 KAR 3:020, as follows: Establishing criteria for removing unqualified trainees; updating limitations on gifts from trainees to staff; updating penalty levels for misconduct; updating summary action provision; updating conduct requirements and disciplinary procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary. This administrative regulation updates operating procedures at the Department of Criminal Justice Training to comply with KRS Chapter 13A, to reflect current operating procedures, and to codify procedures as required by 1998 Ky. Acts ch. 606, sec. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, sec. 98-110, and 117, and to reflect current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

August 14, 1998

(1) Regulation number and title: **503 KAR 3:030**, General training provision - training charges.

(2) The Justice Cabinet, Department of Criminal Justice Training, 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 September 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(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 September 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: Stephanie C. Bingham, Department of Criminal Justice Training, Funderburk Building - Room 208E, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

(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 Criminal Justice Training 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 Chapter 13A and KRS 15A.160.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will amend 501 KAR 3:030, as follows: Raise training charges to an amount in line with present costs; amend regulation to conform to requirements of 1998 Ky. Acts ch. 606, sec. 98-110 and 117.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary. This administrative regulation will provide a cost schedule in keeping with present expenses.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, sec. 98-110, and 117, to codify current operating procedures, and to offset training costs incurred by the Commonwealth of Kentucky through the Department of Criminal Justice Training.

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training, and law enforcement agencies requesting training will comply with operational procedures and standards noted in policy changes.

August 14, 1998

(1) Regulation number and title: **503 KAR 3:040**, General training provision - telecommunications training course trainee conduct requirements; procedures and penalties.

(2) The Justice Cabinet, Department of Criminal Justice Training, 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 September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(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 September 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: Stephanie C. Bingham, Department of Criminal Justice Training, Funderburk Building - Room 208E, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

(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 Criminal Justice Training 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 Chapter 13A and 15A.160.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will create 501 KAR 3:040, as follows: Establishing criteria for participation, criteria for removing unqualified trainees, limitations on gifts from trainees to staff, penalty levels for misconduct, summary action provision, conduct requirements and disciplinary procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary. This administrative regulation prescribes conduct requirements of trainees attending telecommunications training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A, to codify current operating procedures, and to establish consistent training practices and procedures throughout the Department of Criminal Justice Training.

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

TRANSPORTATION CABINET

August 14, 1998

(1) **603 KAR 5:240**, relating to the naming of roads and bridges.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to administrative regulation 603 KAR 5:240. The amendment being considered is to allow roads to be named as heritage trails.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1998 at 3 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room Frankfort, Kentucky 40622.

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

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 September 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: Charles Harman, Transportation Cabinet, Mail-Code 10-13, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-0454.

(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 naming of roads and bridges is KRS 177.074.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:240. It will allow a person, organization, or government unit to petition the Transportation Cabinet to name a highway as a heritage trail. The administrative regulation amendment will set the standards for heritage trails and the signs marking heritage trails.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.074 allow roads and bridges to be named after an individual, historic event, or any other name of historical significance. This administrative regulation sets forth the steps

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

to be followed when petitioning the transportation secretary requesting a road or bridge name. It further sets forth the standards for design and placement of signs denoting the name of the road or bridge.

(d) The benefits expected from the administrative regulation are the establishment of a mechanism to allow highways to be marked as heritage trails without going through the process required to designate the road as a scenic highway or byway.

(e) The administrative regulation will be implemented as follows: Informing the persons, organizations, or government units wishing to identify a road as a heritage trail of the options available and the requirements for such identification.

(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 Charles Harman at the above-mentioned address no later than September 19, 1998.

KENTUCKY BOARD OF EDUCATION

July 28, 1998

(1) **701 KAR 5:021**, Repeal of 701 KAR 5:020, Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.

(2) The Kentucky Board of Education intends to repeal 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 September 25, 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 September 25, 1998, the public hearing will be canceled.

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

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to repeal 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 repeal of an administrative regulation relating to procedure for payment of employees is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to repeal is 701 KAR 5:020.

(c) The necessity, function, and conformity of the proposed administrative regulation is that 701 KAR 5:020 is no longer required because KRS 156.070 has been amended by removing the allowance of appeals to the Kentucky Board of Education.

(d) The benefit expected for the administrative regulation is to conform with KRS 156.070.

(e) The administrative regulation will be implemented as follows: KHSAA appeals to the Kentucky Board of Education will no longer be an option.

July 28, 1998

(1) **701 KAR 5:120**, Objectionable material transmitted to schools via computer.

(2) The Kentucky Board of Education 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 September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to sexually explicit material transmitted to schools via computer is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 701 KAR 5:120.

(c) The necessity, function, and conformity of the proposed administrative regulation is to prevent objectionable material, including sexually explicit material, from being transmitted from or received by any computing or telecommunications system used in local schools and school districts. This administrative regulation requires districts to implement acceptable use policies and to use filtering technologies in every school. The regulation also specifies the Kentucky Department of Education's responsibilities to provide filtering technology to local districts, to provide technical assistance to support implementation of the regulation, and to ascertain compliance.

(d) The benefit expected from the administrative regulation is that students and teachers in the public schools will be protected from receiving or sending objectionable materials through the school computing and telecommunications systems.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(e) The administrative regulation will be implemented as follows: Correspondence will be sent to each superintendent and district technology coordinator informing them of the implementation plan. Copies of standards for filtering technologies, standards for electronic mail, and further information for preventing student exposure to objectionable material will be provided. District technology coordinators will receive a work plan to support installation of the department-provided filtering software in schools as well as technical assistance as needed. Districts migrating to KETS-standard electronic mail will receive technical assistance from regional engineers.

July 28, 1998

- (1) **702 KAR 4:151**, Repeal of 702 KAR 4:150, Energy conservation projects.
- (2) The Kentucky Board of Education intends to repeal 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 September 25, 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 September 25, 1998, the public hearing will be canceled.
- (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) 564-4474, fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing.", or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to repeal 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 repeal of an administrative regulation relating to procedure for payment of employees is KRS 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to repeal is 702 KAR 4:150.
- (c) The necessity, function, and conformity of the proposed administrative regulation is that 702 KAR 4:150 is no longer required because KRS 58.610 has been repealed.
- (d) The benefit expected for the administrative regulation is to conform to KRS 58.610, as amended.
- (e) The administrative regulation will be implemented as follows: 702 KAR 4:150 will be repealed in order to conform with current statutes.

July 28, 1998

- (1) **702 KAR 7:125**, Pupil attendance.
- (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 September 25, 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 September 25, 1998, the public hearing will be canceled.
- (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) 564-4474, fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the amendment of an existing administrative regulation relating to pupil attendance is KRS 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 7:125.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to insure uniformity in recording pupil attendance for purposes of state funding of schools and to conform the regulation to recent statutory amendments.
- (d) The benefits expected for the administrative regulations are the establishment of uniform procedures for recording student attendance for purposes of state funding of schools.
- (e) The administrative regulation will be implemented as follows: State reports will be submitted to the Division of Finance electronically.

July 28, 1998

- (1) **703 KAR 5:010**, Writing portfolio preparation time.
- (2) The Kentucky Board of Education 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 September 25, 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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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 September 25, 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) 564-4474; fax: (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the preparation of writing portfolios is KRS 157.3175.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 4:120.

(c) The necessity, function, and conformity of the proposed administrative regulation is compliance with the requirements of HB 53.

(d) The benefits expected from this proposed administrative regulation are enhanced efficiency and instructional effectiveness of writing portfolio preparation activities.

(e) The administrative regulation will be implemented as follows: Copies of the document generated will be disseminated to all Kentucky school district superintendents, principals, and district assessment coordinators with direction that it be forwarded to classroom teachers, school and district writing resource teachers, and other staff as appropriate.

June 28, 1998

(1) **704 KAR 3:035**, Duties of the professional development coordinator.

(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 September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to professional development programs for certified personnel is KRS 156.095.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:035.

(c) The necessity, function, and conformity of the proposed administrative regulation is to delineate the appointment, qualifications, and other duties of the district professional development coordinator and implement the new amendments to KRS 156.095.

(d) The benefits expected from this proposed administrative regulation are to provide effective, practical information about professional development strategies and technical assistance on planning and evaluation of professional development activities to school councils and staff members.

(e) The administrative regulation will be implemented as follows: All superintendents and district professional development coordinators will be notified of the changes by letter.

July 28, 1998

(1) **704 KAR 3:410**, Preschool education program for four (4) year old children.

(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 September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 operation and personnel standards for the preschool program is KRS 157.3175.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:410.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program.
- (d) The benefits expected from this administrative regulation are to implement statutory requirements and ensure the quality and safety of programs for preschool children.
- (e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and preschool coordinators with direction that it be forwarded to each school principal.

July 28, 1998

- (1) **704 KAR 3:420**, Preschool associate teachers.
- (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 September 25, 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 September 25, 1998, the public hearing will be canceled.
- (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) 564-4474, fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 operation and personnel standards for the preschool program is KRS 157.3175.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:420.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program.
- (d) The benefits expected from the administrative regulation are to implement statutory requirements and ensure the quality and safety of programs for preschool children.
- (e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and preschool coordinators with direction that it be forwarded to each school principal.

July 28, 1998

- (1) **704 KAR 7:070**, Guidelines for dropout prevention programs.
- (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 September 25, 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 September 25, 1998, the public hearing will be canceled.
- (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) 564-4474, fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 dropout prevention programs is KRS 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 7:070.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to prescribe the criteria for operation and funding of dropout prevention programs.
- (d) The benefit expected from the administrative regulation is conform with current statutes.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(e) The administrative regulation will be implemented as follows: The Office of District Support Services will provide guidelines for dropout prevention programs.

July 28, 1998

(1) **704 KAR 10:051**, Repeal of 704 KAR 10:050, Authority to approve courses not in the program of studies.

(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 September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 authority to approve courses not in the Program of Studies is KRS 156.070, KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to repeal is 704 KAR 10:050.

(c) The necessity, function, and conformity of the repeal of the 704 KAR 10:050 is because the amendment of the Program of Studies regulation, 704 KAR 3:303 has resulted in there no longer being a requirement to get state level approval for courses not in the Program of Studies.

(d) The benefit expected from the administrative regulation is that there will no longer be a requirement to get state level approval for courses not in the Program of Studies.

(e) The administrative regulation will be implemented as follows: 704 KAR 10:050 will be repealed.

July 28, 1998

(1) **705 KAR 4:240**, School to careers.

(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 September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 promulgation of a new administrative regulation relating to School to Careers is KRS 156.160 and KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 705 KAR 4:240.

(c) The necessity, function, and conformity of the proposed administrative regulation is to establish the request for proposal process, the criteria for grant awards, the responsibility of local school districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of School to Careers.

(d) The benefit expected from the administrative regulation is to provide guidance in the implementation of a School to Careers System that may ultimately benefit all students in preparation for careers and postsecondary education following high school graduation. Also, this regulation enables distribution of School to Work grants to local school districts for the 1998-1999 school year.

(e) The administrative regulation will be implemented as follows: The regulation will be disseminated to all local school districts along with a request for proposal to apply for School to Careers grants; The School to Careers Advisory Committee to provide guidance to the Department of Education in implementation of the School to Careers System; staff in the Department of Education will provide technical assistance to local school districts in implementing the School to Careers System.

July 28, 1998

(1) **707 KAR 1:150**, Preschool education program for children with disabilities.

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 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 September 25, 1998, the public hearing will be canceled.

(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) 564-4474, fax: (502) 564-9321.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 operation and personnel standards for children with disabilities is KRS 157.226.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 707 KAR 1:150.

(c) The necessity, function, and conformity of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program for children with disabilities.

(d) The benefit expected from the administrative regulation is to implement statutory requirements and ensure the quality and safety of programs for preschool children with disabilities.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents, preschool coordinators and directors of special education with direction that it be forwarded to each school principal.

EDUCATION PROFESSIONAL STANDARDS BOARD

July 1998

(1) **704 KAR 20:720**, Professional Certificate for Exceptional Work Experience, limited to secondary education.

(2) The Education Professional Standards Board intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 1998, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Professional Certificate for Exceptional Work Experience, limited to secondary education, is KRS 161.020, 161.028, 161.030, and 161.048.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate is 704 KAR 20:720, Professional Certificate for Exceptional Work Experience, limited to secondary education.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professionals hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.

(d) The benefits expected from administrative regulation are: A procedure to allow more individuals to achieve teacher certification through an alternative route.

(e) The administrative regulation will be implemented as follows: Notification of regulation will be given to Kentucky school districts.

MOREHEAD STATE UNIVERSITY

August 10, 1998

(1) Regulation number and title: **755 KAR 1:070**. Affiliated corporations.

(2) Morehead State University 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 September 22, 1998, at 10 a.m. at Morehead State University, Howell-McDowell 111, Morehead, Kentucky.

(4)(a) The 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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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 September 22, 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: Porter Dailey, Vice President for Administration and Fiscal Services, Howell-McDowell 202, Morehead State University, Morehead, Kentucky 40351, Phone: (606) 783-2053, Fax: (606) 783-5011.

(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 Morehead State University 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 164A.560.

(b) The administrative regulation that Morehead State University intends to promulgate will add the new regulation 755 KAR 1:070. Affiliated corporations. It will allow Morehead State University to organize and operate one or more affiliated corporations in accordance with KRS 164A.610.

(c) The necessity and function of the proposed administrative regulation is as follows: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provision of KRS 164A.610 at Morehead State University.

(d) The benefits expected from administrative regulation are: The internal authorization of this regulation will improve administrative functions through closer, on-site management which allows for greater control and flexibility. This internally authorized regulation will implement the statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.

(e) The administrative regulation will be implemented as follows: When it is approved.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

July 13, 1998

(1) **806 KAR 15:040**, Licensing, reporting, and general requirements for viatical settlement providers and brokers.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for September 21, 1998, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at a 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 September 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance 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 this administrative regulation is 1998 Ky. Acts ch. 403, secs. 2(2) and 6(1).

(b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will establish licensing and reporting requirements for viatical settlement providers and brokers. In addition, this administrative regulation will establish the procedures and guidelines for the termination or revocation of the license.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to 1998 Ky. Acts ch. 403, no person may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner. Given the commissioner's responsibility to license viatical settlement providers and brokers, this administrative regulation is necessary to establish licensing procedures. In addition, this administrative regulation is necessary to establish the procedures and guidelines governing the termination or revocation of a license to provide, enter into, or solicit a viatical settlement contract.

(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will establish uniform and standardized licensing requirements for all viatical settlement providers and brokers. Compliance with these uniform licensing requirements will assure the department that viatical settlement providers and brokers are appropriately authorized to conduct viatical business in this state. Furthermore, this administrative regulation permits the department to take formal administrative action against a viatical licensee that may be harming the public or engaging in unfair trade practices and frauds in the sale of viatical settlement agreements. Lastly, the reporting requirements established by this administrative regulation will assist the department in maintaining statistics regarding policies viaticated in this state.

(e) The administrative regulation will be implemented as follows: The Department of Insurance will utilize this administrative regulation to assure that viatical settlement providers and brokers have met all requirements necessary to be licensed as such in the state of Kentucky. In addition, this administrative regulation will provide the authority for the Department of Insurance to terminate or revoke the license of a viatical settlement provider or broker should such action become necessary for the protection of the public and the viatical business.

August 4, 1998

(1) **806 KAR 17:170**, Genetic testing.

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

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. Phone (502) 564-6032. Fax (502) 564-1456.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance 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 the administrative regulation is KRS 304.2-110.

(b) The administrative regulation that the Department intends to promulgate will not amend an existing administrative regulation. It will define "genetic test," "genetic information," and "genetic services."

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 496, secs. 2(1)(f), 4(3)(a)2, 5(3), and 55(2), (3), and (4) each reference either "genetic test," "genetic information," or "genetic services." These terms were not specifically defined by 1998 Ky. Acts ch. 496. Therefore, in order to assist the insurers that must operate under the provisions of 1998 Ky. Acts ch. 496, it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation is also necessary for the Commissioner of Insurance to enforce the provisions of 1998 Ky. Acts ch. 496 related to genetic tests, genetic information, and genetic services.

(d) The benefits expected from administrative regulation is as follows: The definitions established by this administrative regulation will enable insurers of health benefit plans to comply with the provisions of 1998 Ky. Acts ch. 496 that refer to genetic tests, information, and services. In addition, this administrative regulation will assist the Commissioner of Insurance in his regulatory duties as they relate to 1998 Ky. Acts ch. 496.

(e) The administrative regulation will be implemented as follows: The terms defined in this administrative regulation will assist insurers in their duty to comply with the provisions in 1998 Ky. Acts ch. 496 that relate to genetic test, genetic information, and genetic services. In addition, the commissioner will rely upon the definitions in this administrative regulation to enforce the provisions in 1998 Ky. Acts ch. 496 that relate to genetics.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions

August 1, 1998

(1) Regulation to be amended: **808 KAR 12:020**, Claims of exemption.

(2) The Department of Financial Institutions 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 September

24, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 September 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.

(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 person 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 294.140(1).

(b) The proposed administrative regulation will amend 808 KAR 12:020. The amendment will delete the paragraph of the regulation requiring annual updating of claims of exemption. It will require a company that is required to file a claim of exemption to update its application only under certain circumstances.

(c) The necessity and function of the proposed administrative regulation is as follows: To maintain current information concerning companies who are required to file a claim of exemption.

(d) The benefits expected from the proposed administrative regulation are: It will eliminate filing requirements that are unnecessary for effective regulation and are overly burdensome on the department.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

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

August 6, 1998

(1) Regulation number and title: **815 KAR 7:105**; Kentucky Building Code/1997.

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, September 22, 1998, at 10 a.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Create a new subsection in Chapter 28 that gas-fired appliances shall comply with NFPA 54.
2. Create a new subsection in Chapter 4 that gas appliances located where corrosive or flammable chemicals are kept shall be protected in accordance with NFPA 54.

3. Amend Chapter 2 by creating a new definition for "townhouse."

4. Amend subsection 310.6 in Chapter 3 in to include townhouses in Use Group R-4 structures, and require radon measures in Zone 1 to comply with the CABO /One and Two Family Dwelling Code.

5. Update the NFPA 101 edition to 1997.

(c) The necessity and function of the proposed administrative regulation is as follows: It is necessary to promulgate the intended administrative regulation in order to put into place an updated edition of the Kentucky Building Code. The intended amendments are necessary to keep the Code current and up-to-date with acceptable practices.

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

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

August 6, 1998

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, September 22, 1998, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The department intends to amend 815 KAR 20:120, Water supply and distribution by creating a new subsection in Section 10(9) to require that joints between ferrous pipe and copper pipe be made with a dielectric fitting to prevent electrolysis.

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

(d) The benefits expected from this administrative regulation are: This amendment should extend the length of time before the water distribution system must be repaired or serviced.

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

August 13 1998

(1) Regulation number and title: **815 KAR 35:015**; Certification of electrical inspectors

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, September 22, 1998, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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

1. It is requested, in writing, by at least one (1) person, 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 September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.489 and 13A.100.

(b) The department intends to amend 815 KAR 35:015 to require compliance with Senate Bill 18 by electrical inspectors as part of their official responsibility to maintain certification.

(c) The necessity and function of the proposed administrative regulation is as follows: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation is needed to include compliance with Senate Bill 18 as one of the responsibilities of the electrical inspector, the violation of which would subject him to disciplinary action.

(d) The benefits expected from this administrative regulation are: Maintaining continuing education requirements will keep inspector's knowledge current and up-to-date with new developments in industry.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

August 6, 1998

(1) Regulation number and title: **815 KAR 45:050**, Requirements for obtaining firefighter's training facility grants.

(2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, September 22, 1998, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least one (1) person 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 September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799, Telephone: (502) 564-8044.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.260(1).

(b) The commission intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary changes include clarification that the commission recognizes the qualifications of fire departments for eligibility to receive aid and deletes unnecessary language in Section 2. Also, the commission is the agency to review applications and approve same for funds in Section 4.

(c) The necessity and function of the proposed administrative regulation is as follows: The purpose of this administrative regulation is to set out standards and procedures for reviewing and processing applications and determining eligibility qualifications and use of the funds to be expended from the Firefighter's Training Center Fund.

(d) The benefits expected from this administrative regulation are: Provide a safe and acceptable system for reviewing applications and determining qualifications for those fire departments applying for funds from the Firefighter's Training Center Fund.

(e) This administrative regulation will be implemented by the Commission on Fire Protection Personnel Standards and Education.

**CABINET FOR HEALTH SERVICES
Office of Certificate of Need**

July 29, 1998

(1) **900 KAR 6:030**, Certificate of need expenditure minimums.

(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 regulation has been scheduled for September 30, 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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

least 10 days prior to September 30, 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4 West, 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 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 and 216B.130.

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

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 216B.040 authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.103 requires the cabinet to annually adjust expenditure minimums set forth in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1998 and ending July 14, 1999.

(d) The benefits expected from the administrative regulation are: Compliance with the requirements of KRS 216B.130 that certificate of need expenditure minimums be adjusted annually.

(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.

August 10, 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 September 30, 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 September 30, 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4 West, 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 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 216B.040(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.

Department for Public Health Division of Epidemiology and Health Planning

August 14, 1998

(1) **901 KAR 5:070**, Certificate of birth amended.

(2) Cabinet for Health Services, Department of Public Health, Division of Epidemiology and Health Planning 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 September 30, 1998, at 9 a.m., in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(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 or one (1) person representing an 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 at least 10 calendar days prior to September 30, 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: Patty Patrick, Cabinet for Health Services, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, 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 of Public Health, Division of Epidemiology and Health Planning, 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/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 901 KAR 5:070 is KRS 213.036 and 213.046

(b) The administrative regulation that the Department of Public Health, Division of Epidemiology and Health Planning intends to promulgate will amend 901 KAR 5:070, by revising forms which are incorporated by reference and are necessary to establish paternity to comply with legislation passed in the 1998 General Assembly.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To revise forms incorporated by reference to comply with legislation passed in the 1998 General Assembly.

(d) The benefits expected from this administrative regulation are: To bring paternity forms into compliance with state legislation passed in the 1998 General Assembly and federal statutory requirements of 45 CFR parts 302, 303, and 304.

(e) The administrative regulation will be implemented as follows: The Department of Public Health, Epidemiology and Health Planning, Office of Vital Statistics will provide revised forms to the public to provide paternity acknowledgment services in accordance with KRS 213.036 and 213.046. Forms are incorporated by reference.

Division of Adult and Child Health

August 15, 1998

(1) **902 KAR 4:051**, Repealer regulation for 902 KAR 4:050, Kentucky Family Planning Program, and 902 KAR 4:100, Maternal and child health services.

(2) The Cabinet for Health Services, Department for Public Health, Division of Adult and Child Health, intends to promulgate an administrative regulation governing the subject matters cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for September 30, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 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 September 30, 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: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulation relating to 902 KAR 4:051 are HB 132 of the 1998 GA, KRS 194.050 and 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the repeal of outdated service requirements for local health departments.

(c) The necessity, function, and conformity of the proposed administrative regulation as follows: KRS 211.090 which requires the cabinet to supervise and assist Kentucky's local health departments in carrying out the provisions of law and in undertaking their public health functions and responsibilities.

(d) The benefit expected from the administrative regulation: Elimination of outdated service requirements for local health departments.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for notifying local health departments and boards of health of the repeal of 902 KAR 4:050 and 902 KAR 4:100 and of the implementation of new administrative regulation. The division will also provide training on the new regulation.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Office of Inspector General

August 3, 1998

- (1) **902 KAR 20:016** - Hospitals; operations and services.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, 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 administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
 - (b) The cabinet intends to amend Section 3(11)(d)7, 8, and 11, 4(2)(c)5., and 4(3)(d) to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of hospitals.
 - (d) The benefits expected from these proposed amendments are that they will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

August 3, 1998

- (1) **902 KAR 20:041** - Operation and services; family care homes.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, 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 administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105. The statutory authority for the amendment of administrative regulations relating to persons listed on the nurse aide abuse registry working for long-term care facilities is HB 621 enacted during the 1998 Regular Session of the General Assembly.
 - (b) The cabinet intends to amend 902 KAR 20:041 at Section 3 to address the prohibition against the operation by or employment of persons listed on the nurse aide abuse registry. Section 4(1)(g) and (i) will be amended to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of family care homes.
 - (d) The benefits expected from these proposed amendments are that they will prohibit persons listed on the nurse aide abuse registry to operate or be employed by a family care home, and will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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

August 3, 1998

- (1) **902 KAR 20:078** - Operations and services; group homes.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
 - (b) The cabinet intends to amend Section 7(4)(b) to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of group homes.
 - (d) The benefits expected from these proposed amendments are that they will permit more flexibility in the prescription of medication, and permit clinical personnel to perform tasks within the limits of their statutory scope of practice.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Medicaid Services

August 15, 1998

- (1) **907 KAR 1:031**, Payment for home health services.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 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 September 30, 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: Patty Patrick, 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 payments for home health services are KRS 194.050, 205.520 and HB 132 of 1998 GA.
 - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:031, Payments for Home Health Services, to delete outdated material, to revise the language to comply with the requirements of KRS Chapter 13A, and to incorporate the administrative appeal process for providers subject to cost-based reimbursement as outlined in 907 KAR 1:671.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable for home health agency services and appeal rights for home health service providers.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(d) The benefits expected from administrative regulation are:

1. The revision to the appeal process will make the process consistent with KRS Chapter 13B and 907 KAR 1:671 to ensure that providers are afforded all their due process rights;
 2. Outdated material will be eliminated; and
 3. The language will be consistent with the requirements of KRS Chapter 13A.
- (e) The administrative regulation will be implemented as follows: By the Division of Financial Management and Analysis, Department for Medicaid Services, Cabinet for Health Services.

Department for Mental Health/Mental Retardation Services

August 1, 1998

(1) **908 KAR 3:050.** Per diem rate pursuant to the Patient Liability Act of 1978.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 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 by September 20, 1998, at least 10 days prior to September 30, 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, 4th West, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(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 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation related to charge rates for state psychiatric hospitals is KRS 210 720(2).

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will fix the patient cost per day for board, maintenance and treatment at facilities controlled by the cabinet.

(c) The necessity and function of the administrative regulation is as follows: To establish standardized rates for the patient cost per day for board maintenance, and treatment at psychiatric facilities controlled by the Cabinet for Health Services.

(d) The benefits expected from the amendments to this administrative regulation are: To limit the amounts deemed payable for in-patient care by all consumers within the mental health system. Setting rates in relation to cost will maximize reimbursement from all sources and off-set cost to the Commonwealth.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
30 KAR 4:010E

This emergency administrative regulation sets forth how identification numbers are assigned, prescribes the form for statements filed with the Secretary of State and sets forth the time of filing for statements filed pursuant to 1998 Ky. Acts ch. 542. 1998 Ky. Acts ch. 542 which takes effect on July 15, 1998 requires the Secretary of State to promulgate an administrative regulation setting forth how identification numbers are assigned for individuals. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 30 KAR 4:010 will be filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor
JOHN Y. BROWN III, Secretary of State

GENERAL GOVERNMENT CABINET
Secretary of State

30 KAR 4:010E. Implementation of Kentucky Lien Information System.

RELATES TO: 1998 Ky. Acts ch. 542

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 542

EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 542 establishes the Kentucky Lien Information System and requires the Secretary of State to promulgate administrative regulations for implementing the requirements of 1998 Ky. Acts ch. 542.

Section 1. Form of Statements. The form of a financing statement, amendment, assignment, continuation, release, or termination filed pursuant to 1998 Ky. Acts ch. 542 shall be a file-stamped copy of the statement that has been filed with the county clerk pursuant to KRS 355.9-403, 355.9-404, 355.9-405 or 355.9-406. If the file-stamped copy does not indicate the location of filing, the secured party shall state the county of filing on a transmittal letter accompanying the statement and filing fee. When the proper place to file a statement under KRS 355.9-403, 355.9-404, 355.9-405 or 355.9-406 is the office of the Secretary of State, a filing made with the Secretary of State shall serve as a filing pursuant to 1998 Ky. Acts ch. 542 and the filing fee set forth in 1998 Ky. Acts ch. 542 shall not be required. All statements filed pursuant to 1998 Ky. Acts ch. 542 shall be sent to the Secretary of State, UCC Filings, P.O. Box 1470, Frankfort, Kentucky 40602-1470.

Section 2. Identification Number of Individual. The identification number for an individual shall be the person's Social Security number or designation consisting of the first three (3) characters of the individual's last name and date of birth in the format mm/dd/yy. If an individual only has two (2) characters in his last name, the letter Z shall be used as the last character. An individual shall not be required to provide a Social Security number as an identification number.

Section 3. Time of Filing. A secured party shall have twenty (20) business days from the date the statement is filed with the county clerk to file a file-stamped copy of the statement with the Secretary of State pursuant to 1998 Ky. Acts ch. 542.

Section 4. Effective Date. The requirement to file statements pursuant to 1998 Ky. Acts ch. 542 shall begin on January 4, 1999.

Section 5. Penalty. A secured party shall be fined \$100 for failure to file a statement pursuant to 1998 Ky. Acts ch. 542 within twenty (20) business days from the date the statement is filed with the county clerk.

JOHN Y. BROWN III, Secretary of State
MARYELLEN B. ALLEN, General Counsel
APPROVED BY AGENCY: July 15, 1998
FILED WITH LRC: July 15, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Maryellen B. Allen

(1) Type and number of entities affected: This emergency administrative regulation affects secured parties who file financing statements and related statements.

(2) Direct and indirect costs or savings 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: There are no direct or indirect costs or savings. There should be no impact on cost of living or employment as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the emergency administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings. There will be no impact on the cost of doing business in Kentucky as a result of this administrative regulation.

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

1. First year following implementation: The secured party has an additional filing obligation as a result of 1998 Ky. Acts ch. 542, but not as a result of this emergency administrative regulation. The emergency administrative regulation requires a copy of the form to be filed with the Secretary of State.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The Secretary of State will establish and maintain the Kentucky Lien Information System as a result of 1998 Ky. Acts ch. 542, not this emergency administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: As explained above, the cost of implementing 1998 Ky. Acts ch. 542 is not affected by this administrative regulation.

2. Continuing costs or savings:

(b) Additional factors increasing or decreasing costs: None known.

(c) Reporting and paperwork requirements: 1998 Ky. Acts ch. 542 requires additional filing obligation on the Secretary of State, but there are no additional paperwork or reporting requirements associated with this emergency administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The Secretary of State will receive a fee of \$1 for each filing pursuant to 1998 Ky. Acts ch. 52, not this emergency administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no revenue impact upon the agency as a result of this emergency administrative regulation.

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

(a) Geographical area in which emergency administrative regulation will be implemented: None known.

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Secretary of State considered requiring an original financing statement to be filed with the Secretary of State, but decided that to avoid sending acknowledgements and requiring the secured parties to maintain separate identification numbers, the more cost effective and efficient method was to require a file-stamped copy to be filed with the Secretary of State.

(8) Assessment of expected benefits: Requiring a file-stamped copy will allow a more cost effective and efficient system for creating

a statewide lien database.

(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 known.

(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: There should be no statute or administrative regulation which conflicts or duplicates this process.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used. This emergency administrative regulation applies equally to all secured parties.

STATEMENT OF EMERGENCY 40 KAR 2:070E

This emergency administrative regulation amends the procedures for registration of telephone solicitation merchants. This emergency administrative regulation, pursuant to Senate Bill 199, enacted during the 1998 Regular Session of the General Assembly, established standards for telemarketing and consumer rights. In order to implement the standards, and establish clear guidelines for telemarketers and procedures to protect consumers, immediate implementation of administrative regulations is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for an amendment to 40 KAR 2:070 was filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor

ALBERT B. CHANDLER III, Attorney General

ATTORNEY GENERAL'S OFFICE Department of Law Consumer Protection Division

40 KAR 2:070E. Procedure for registration of telephone solicitation merchants.

RELATES TO: KRS 367.150, 367.46971, 367.46973, 367.46981, 1998 Ky. Acts ch. 581

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.46983

EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing [To regulate] the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. This administrative regulation establishes procedures for registration of merchants, telemarketing company, or telemarketers governed by the provisions of KRS 367.46951 to 367.46999.

Section 1. Definitions. "Telemarketer" means any of the following entities:

(1) "Merchant" is defined by 1998 Ky. Acts ch. 581, sec. 1(7); or

(2) "Telemarketer" is defined by 1998 Ky. Acts ch. 581, sec. 1(11); or

(3) "Telemarketing company" is defined by 1998 Ky. Acts ch. 581, sec. 1(13). ["Material change" in reported information required by KRS Chapter 367 (SB 168, sec. 7) means any additions or deletions of factual matter which would have a significant consequence in the evaluation of the application if it were contained in the original filing; such as but not limited to:

(1) Any association with any officer, director, trustee, general or limited partner, sole proprietor, owner, or person having management responsibility in the applicant's business activities whose past occur-

rences would have been required to have been reported in an original application pursuant to KRS 367.4697;

(2) Filing of any bankruptcy petition by applicant;

(3) Any filing by any governmental agency against the applicant which, upon resolution, would have been required to be reported pursuant to KRS 367.46971;

(4) Any change in sales presentations, scripts, sales literature, or similar documentation, which significantly changes the predictions of value of goods or service offered, or the likelihood of profit in any investment opportunity offered, which would have been required to have been originally reported pursuant to KRS 367.46971.]

Section 2. Registration. (1)(a) Registration, and renewals of registration, for telephone solicitation and fees for registration pursuant to KRS 367.46971 shall be made on "Commonwealth of Kentucky Telephone Solicitation Merchant Registration Statement".

(b) Within ten (10) business days after filing "Commonwealth of Kentucky Telephone Solicitation Merchant Registration Statement", a telemarketer shall file:

1. "Commonwealth of Kentucky, Office of the Attorney General, Consent for Service by Telephone Solicitation Merchant"; and

2. One (1) of the following bond forms:

a. "Commonwealth of Kentucky, Office of the Attorney General, Bond for Telephone Solicitation Merchant"; or

b. "Commonwealth of Kentucky, Office of the Attorney General, Premium Surety Bond"; or

c. "Commonwealth of Kentucky, Office of the Attorney General, Assignment of Certificate Of Deposit".

(2) If a telemarketer is exempt from registration pursuant to KRS 367.46951(2), he shall file "Commonwealth of Kentucky, Office of the Attorney General, Affidavit of Telephone Solicitation Merchant Exemption".

(3) A registration may be withdrawn prior to approval by submitting a written request that the application be withdrawn. [Registration Required: (1) Registration for telephone solicitation and fees for registration shall be controlled by KRS 367.46971, 367.46973, and 367.46981.

(2) Applicants shall utilize form TS 1, 10/94, hereby adopted and incorporated by reference. Copies of the form may be inspected, copied or obtained at the office of the Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. to 4:30 p.m.

(3) An application may be withdrawn prior to approval by submitting a written request that the application be withdrawn.]

Section 3. (1) The information specified in this subsection shall be considered a material change that a telemarketer shall file in an addendum to his original or annual registration:

(a) A change relating to information in an original or annual filing required by KRS 367.46971(3), and 367.46973(11), (12), and (13).

(b) An addition or deletion of factual matter that differs from the factual matter contained in a merchant's original filing.

(c) An association with an officer, director, trustee, general or limited partner, sole proprietor, owner, or person having management responsibility in an applicant's business, or other person specified by KRS 367.46973(5) and (7), who, after a merchant's original filing:

1. Has committed an act or offense specified by 367.46973(8)(a); or

2. Is subject to a final judgment or order specified by 367.46973(8)(b) and (c); or

3. Has filed in bankruptcy or been adjudged as bankrupt as specified by KRS 367.46973(8)(d).

(2) Information filed pursuant to subsection (1) of this section shall contain the information required by 367.46973(8).

(3) Information required pursuant to this section shall be filed on "Commonwealth of Kentucky, Telephone Solicitation Merchant Registration Statement".

(b) Information required pursuant to this section shall be filed with the Attorney General, Division of Consumer Protection. [A surety bond shall be maintained pursuant to KRS 367.46981.]

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Telephone Solicitation Merchant Registration Statement" Form TS-1, 1998;

(b) "Commonwealth of Kentucky, Office of the Attorney General, Telephone Solicitation Merchant, Consent for Service" Form TS-2, 1998;

(c) "Commonwealth of Kentucky, Office of the Attorney General, Assignment of Certificate of Deposit" Form TS-3, 1998;

(d) "Commonwealth of Kentucky, Office of the Attorney General, Bond for Telephone Solicitation Merchant" Form TS-4, 1998;

(e) "Commonwealth of Kentucky, Office of the Attorney General, Premium Surety Bond" Form TS-5, 1998; and

(f) "Commonwealth of Kentucky, Office of the Attorney General, Affidavit of Telephone Solicitation Merchant Exemption" Form TS-6, 1998.

(2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [KRS 367.46987 shall control the use of electronic equipment for telephone solicitation.]

ALBERT B. CHANDLER, III, Attorney General

TODD LEATHERMAN, Director

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

(1) Type and number of entities affected: The only entities affected will be the nonexempt telemarketers, who will need to register with the Commonwealth of Kentucky.

(2) Direct or indirect costs or savings to those affected:

(a) First year: The proposed regulation imposes no direct or indirect costs or savings to the telemarketers during the first year, other than administrative expenses in filing a registration and a \$300 fee is imposed to defray the cost.

(b) Continuing costs or savings: Statement from 2A is true for the continuing years.

(3) Additional factors increasing or decreasing costs (note any effects upon competition):

(a) Reporting and paperwork requirements: The registration is intended to provide a substantial amount of data, however, it is similar to the requirements of other states, so the costs can be spread over many states, and the added cost of compliance with the state should be minimal. In the event that a hearing is requested, additional paperwork will be required. The additional cost is impossible to estimate.

(4) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Not applicable.

(b) Continuing costs or savings: The information in 4a above will be true for continuing years.

(5) Additional factors increasing or decreasing costs: None applicable.

(6) Reporting and paperwork requirements: None applicable.

(7) Assessment of anticipated effect on state and local revenues: Not applicable.

(8) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None 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) TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

STATEMENT OF EMERGENCY 40 KAR 2:075E

This emergency administrative regulation will allow consumers to be placed on a Commonwealth of Kentucky No Telephone So-

licitation Calls List. This administrative regulation will provide procedures to obtain a copy of the Commonwealth of Kentucky No Telephone Solicitation Calls List by telemarketing companies and procedures for filing violations. This emergency administrative regulation, pursuant Senate Bill 199, enacted during the 1998 Regular Session of the General Assembly, established standards for telemarketing and consumer rights. In order to implement the standards, and establish clear guidelines for telemarketers and procedures to protect consumers, immediate implementation of administrative regulations is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 2:075 was filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor

ALBERT B. CHANDLER III, Attorney General

ATTORNEY GENERAL'S OFFICE Department of Law Consumer Protection Division

40 KAR 2:075E. Commonwealth of Kentucky No Telephone Solicitation Calls List.

RELATES TO: KRS 367.150, 367.46971, 367.46973, 367.46981, 1998 Ky. Acts ch. 581, sec. 3(15)

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983

EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. 1998 Ky. Acts ch. 581, sec. 3(15) establishes the right of consumers to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List". 1998 Ky. Acts ch. 581, sec. 3(15), requires the Office of the Attorney General to establish fees to defray the cost of the no telephone solicitation calls program. This administrative regulation establishes requirements relating to the "Commonwealth of Kentucky No Telephone Solicitation Calls List", fees and the notification procedure.

Section 1. Definitions. (1) "Telemarketer" means any of the following entities:

(a) "Merchant", is defined by 1998 Ky. Acts ch. 581, sec. 1(7); or

(b) "Telemarketer", is defined by 1998 Ky. Acts ch. 581, sec. 1(11); or

(c) "Telemarketing company", is defined by 1998 Ky. Acts ch. 581, sec. 1(13).

(2) "A holder of a telephone number" means each member of a household.

Section 2. Placement on the "Commonwealth of Kentucky No Telephone Solicitation Calls List". (1) A holder of a telephone number who wishes to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall file a request on the "Commonwealth of Kentucky Request For Placement On No Telephone Solicitation Calls List".

(2) A holder of a telephone number shall include the following information:

(a) Name;

(b) Address, including city, county, and zip code;

(c) The number of each telephone to which the notification applies.

(3) A holder of a telephone number shall sign and date the "Commonwealth of Kentucky Request For Placement On No Telephone Solicitation Calls List" submitted to the Office of the Attorney General.

(4) The name of a holder of a telephone number shall appear on the "Commonwealth of Kentucky No Telephone Solicitation Calls List" on the first business day of the month following receipt of the request.

(5) The name of a holder of a telephone number shall be removed from the "Commonwealth of Kentucky No Telephone Solicitation Calls List" if:

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- (a) A written request in any form by the name of a holder of a telephone number has been received by the Attorney General; or
- (b) If the name of a holder of a telephone number has been purged from the list because he is no longer the holder of the telephone number identified on the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

Section 3. Publication. (1) Quarterly publication.

(a) The "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall be published on the first business day of each quarter as a printed document or by computer diskette. It shall contain the names of holders of a telephone number who have requested to be placed on the list the preceding quarter.

(b) Months for quarterly publication of the "Commonwealth of Kentucky No Telephone Solicitation Calls List":

1. The first quarter shall include the months of January, February and March;
2. The second quarter shall include the months of April, May and June;
3. The third quarter shall include the months of July, August, and September;
4. The fourth quarter shall include the months of October, November and December.

(2) "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall be published on the first business day of each month as a printed document or by computer diskette. It shall contain the names of holders of a telephone number who have requested to be placed on the list the preceding month.

Section 4. Fee. (1) Monthly Fee. Thirty-five (35) dollars shall be charged to a telemarketer for a copy per month of the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

(2) Quarterly fee. A \$100 fee shall be charged to a telemarketer for a copy per quarter of the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

(3) Annual fee. A \$400 fee shall be charged to a telemarketer for the payment in advance of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" for the following twelve (12) consecutive months.

Section 5. The "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall:

- (1) Be certified by the Office of the Attorney General; and
- (2) Not be duplicated by a telemarketing company in any form, except for copies required to notify employees of a holder of a telephone number to whom no solicitation calls shall be made.

Section 6. Application for "Commonwealth of Kentucky No Telephone Solicitation Calls List". (1) A telemarketing company subject to the provisions of KRS 367.46951 to 367.46999 shall apply for a certified copy of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" on a "Request for Commonwealth of Kentucky No Telephone Solicitation Calls List".

(2) A telemarketing company shall provide the following information:

- (a) The month, quarter, or year for which a list is requested;
- (b) Whether the request is for a county or statewide list;
- (c) The format of the list, either printed document or computer diskette;
- (d) The name and title of the person requesting the information; and
- (e) The name, telephone number, and complete address of the telemarketer company.

Section 7. Complaints Relating to Violations of 1998 Ky. Acts ch. 581, sec. 3(15). (1) A holder of a telephone number who wishes to file a complaint shall complete a "Telemarketing Complaint Form".

(2) A holder of a telephone number shall provide the following information:

- (a) Name, home and work phone numbers, address, city, county, state, and zip code;
- (b) Name of the telemarketing company or person, address, city, county, state and zip code that is the subject of the complaint;
- (c) Time and length of each call;

(d) Whether a fee was requested;

(e) Whether the caller used threatening, intimidating, profane or obscene language;

(f) Whether a holder of a telephone number had notified the Attorney General's Office that he wanted to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List";

(g) Whether a holder of a telephone number had advised the caller that he was not interested in the product. If so, how long it took for the caller to end the call; and

(h) A statement of the facts relating to the complaint.

Section 8. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Request for Placement on No Telephone Solicitation Calls List", Form TS-7, 1998;

(b) "Request for Commonwealth of Kentucky No Telephone Solicitation Calls List", Form TS-8, 1998; and

(c) "Telemarketing Complaint Form", Form TS-9, 1998.

(2) These forms may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALBERT B. CHANDLER, III, Attorney General
TODD LEATHERMAN, Director

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

(1) Type and number of entities affected: The only entities affected will be the nonexempt telemarketers, who will need to purchase the Commonwealth of Kentucky No Telephone Solicitation Calls List.

(2) Direct or indirect costs or savings to those affected:

(a) First year: The proposed regulation imposes a fee to the nonexempt telemarketers of \$100 per quarter to purchase the Commonwealth of Kentucky No Telephone Solicitation Calls List. The proposed regulation imposes no direct or indirect costs or savings to the consumer.

(b) Continuing costs or savings: Statement from 2A is true for the continuing years.

(3) Additional factors increasing or decreasing costs (note any effects upon competition):

(a) Reporting and paperwork requirements: For the nonexempt telemarketers, the new regulation will require them to purchase the Commonwealth of Kentucky, No Telephone Solicitation Calls List every quarter.

(4) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be a direct cost to the Consumer Protection Division to produce every quarter in the format requested (diskette or hard copy), a listing of the consumers on the Commonwealth of Kentucky No Call Telephone Solicitation Calls List and the postage required. Also, this will require an additional staff person. However, the new statute imposes a fee to defray the cost to the division.

(b) Continuing costs or savings: The information in 4a above will be true for continuing years.

(5) Additional factors increasing or decreasing costs: None applicable.

(6) Reporting and paperwork requirements: Consumers who wish to be placed on the Commonwealth of Kentucky No Call Telephone Solicitation Calls List will need to complete a Request for Placement on No Telephone Solicitation Calls List and return it to the division.

(7) Assessment of anticipated effect on state and local revenues: Not applicable.

(8) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None 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) TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

STATEMENT OF EMERGENCY
40 KAR 2:076E

This emergency administrative regulation will give a person a way in which to file a complaint with the Office of the Attorney General, Consumer Protection Division, regarding the new section of the bill which relates to the prohibited telephone solicitation act or practice. This emergency administrative regulation, pursuant Senate Bill 199, enacted during the 1998 Regular Session of the General Assembly, established standards for telemarketing and consumer rights. In order to implement the standards, and establish clear guidelines for telemarketers and procedures to protect consumers, immediate implementation of administrative regulations is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 2:076 was filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor
ALBERT B. CHANDLER III, Attorney General

ATTORNEY GENERAL'S OFFICE
Department of Law
Consumer Protection Division

40 KAR 2:076E. Procedures and notification of violations of the Prohibited Telephone Solicitation Act or Practice of 1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16).

RELATES TO: KRS 367.150, 367.46971, 367.46973, 367.46981, 1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16)

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983
EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.4693 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. 1998 Ky. Acts ch. 581, sec. 3(1)-(14), and (16) establishes prohibited telephone solicitation acts or practices for any telemarketing company. This administrative regulation establishes requirements relating to the enactment and enforcement of the Prohibited Telephone Solicitation Act or Practice.

Section 1. Complaints relating to a violation of 1998 Ky. Acts ch. 581, sec. 3(1)-(14), and (16) shall be filed with the Office of the Attorney General, Consumer Protection Division in the following manner:

- (1) An oral complaint made either by telephone or in person; or
- (2) A written complaint giving a statement of the facts; or
- (3) A written complaint filed on

"Telemarketing Complaint Form".

(4) A person filing a complaint shall provide the following information:

- (a) Name, home and work phone numbers, address, city, county, state, and zip code;
- (b) Name of the telemarketing company or person, including, address, city, county, state and zip code, that is the subject of the complaint;
- (c) Time and length of each call;
- (d) Whether a fee was requested;
- (e) Whether the caller used threatening, intimidating, profane or obscene language;
- (f) Whether the person filing the complaint had advised the caller that he was not interested in the product. If so, how long it took for the caller to end the call; and
- (g) A statement of the facts relating to the complaint.

Section 2. Incorporation by Reference. (1) "Telemarketing Com-

plaint Form" Form TS-9, 1998 is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALBERT B. CHANDLER, III, Attorney General
TODD LEATHERMAN, Director

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

(1) Type and number of entities affected: The only entities affected will be the telemarketers doing business in Kentucky.

(2) Direct or indirect costs or savings to those affected:

(a) First year: The proposed regulation imposes no direct or indirect costs or savings.

(b) Continuing costs or savings: Statement from 2A is true for the continuing years.

(3) Additional factors increasing or decreasing costs (note any effects upon competition):

(a) Reporting and paperwork requirements: Not applicable.

(4) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Not applicable.

(b) Continuing costs or savings: The information in 4a above will be true for continuing years.

(5) Additional factors increasing or decreasing costs: None applicable.

(6) Reporting and paperwork requirements: None applicable.

(7) Assessment of anticipated effect on state and local revenues: Not applicable.

(8) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute.

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

TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

STATEMENT OF EMERGENCY
40 KAR 6:010E

This emergency administrative regulation establishes the Kentucky Victim and Witness Protection Program. An ordinary administrative regulation is not sufficient because an emergency exists. An emergency administrative regulation must be placed into effect immediately in order to meet an imminent threat to the public health, safety and welfare. Crime victims and witnesses and their immediate families are often at substantial risk of imminent serious physical injury. 1998 Ky. Acts ch. 606, sec. 50, which becomes effective July 15, 1998, provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families, and further provides that the Attorney General shall promulgate administrative regulations under KRS Chapter 13A for the operation of the program. 1998 Ky. Acts ch. 616, Part I, Operating Budget, A. Government Operations, 5. Attorney General, includes an appropriation of \$200,000 in fiscal year 1998-99 and \$200,000 in fiscal year 1999-2000 to fund the Victim and Witness Protection Program. Therefore, it is necessary to promulgate this emergency administrative regulation in order for law enforcement agencies and prosecutors to immediately apply for funding for protective services for crime victims and witnesses and their immediate families who are at substantial risk of imminent serious physical injury. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 6:010 was filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor
ALBERT B. CHANDLER III, Attorney General

DEPARTMENT OF LAW
Office of the Attorney General

40 KAR 6:010E. Kentucky Victim and Witness Protection Program.

RELATES TO: 1998 Ky. Acts ch. 606, sec. 50, 1998 Ky. Acts ch. 616, Part I, Operating Budget, A. Government Operations, 5. Attorney General

STATUTORY AUTHORITY: KRS 15.180, 1998 Ky. Acts ch. 606, sec. 50(1), (2), (6)

EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 606, sec. 50 provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

Section 1. Definitions. (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.

(2) "Law enforcement agency" means:

- (a) The Kentucky State Police;
- (b) A sheriff's office;
- (c) A county police department; or
- (d) A city police department.

(3) "Program" means the Kentucky Victim and Witness Protection Program.

(4) "Prosecutor" means a:

- (a) Commonwealth's attorney or his authorized assistant; or
- (b) County attorney or his authorized assistant.

(5) "Protective services" is defined by 1998 Ky. Acts ch. 606, sec. 50.

(6) "Victim or witness at risk of harm" means a person who is:

- (a) 1. A crime victim as defined in KRS 421.500(1); or
- 2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or
- 3. A member of the immediate family of a crime victim or crime witness; and

(b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; and

- (c) At substantial risk of imminent serious physical injury, and
- (d) Unable to provide protective services to himself.

Section 2. Eligible Costs. (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.

(2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.

(3) Reimbursement shall be limited to the costs for protective services that:

(a) Were paid by the law enforcement agency with the funds of:

- 1. The law enforcement agency; or
- 2. A fiscal court; or
- 3. A city government; or
- 4. Other fund sources available to the law enforcement agency;

and

(b) Meet the requirements established by the provisions of this administrative regulation; and

(c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.

(4) Reimbursement shall be limited to the costs of protective services that were necessary and reasonable for the protection of a victim or witness at risk of harm.

(5) The following costs of protective services shall be deemed reasonable:

- (a) The regular hourly wage and benefit rate, or the regular

overtime hourly wage and benefit rate when applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.

(b) Cost of lodging that:

1. Is the most economical lodging, at government rates if available; and

2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(c) Meals, as follows:

1. Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and

2. Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper;

(d) Cost of the most economical personal hygiene products.

(e) Cost of emergency long distance phone calls to family members or employers.

(f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.

(g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(h) Cost of the temporary emergency use of a cellular phone.

(i) Actual mileage at twenty seven (27) cents per mile.

(j) Cost of a rental vehicle at the most economical rate available.

(k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.

(l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.

(n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.

(6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.

(7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that met the needs of the protective services.

(8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

(9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.

(10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for Reimbursement. (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.

(2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form.

(3) An application for reimbursement shall include:

(a) The name of the law enforcement agency.

(b) The criminal case name and number or defendant's name, if known.

(c) The name of the person receiving the protective services.

(d) A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.

(e) A complete description of the protective services provided, including:

1. The type of protective services provided;
2. The name of person who received the services;
3. The date the services were provided;
4. The cost of the protective services;

5. A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and

6. A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.

(f) Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.

(g) A statement signed by the head of the law enforcement agency or his authorized agent that the:

1. Law enforcement agency requests reimbursement of the costs of the protective services provided;
2. Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and
3. Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.

(4) The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.

Section 4. Prosecutor's Application for Reimbursement. (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement that he recommends reimbursement of all or part of the costs of the protective services.

(3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.

(4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.

(5) The council shall consider applications in the order received.

(6) The council shall recommend that:

(a) All or part of an application for reimbursement be approved;

or

(b) An application for reimbursement be denied.

(7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.

(8) The council shall submit its recommendation to the Attorney General.

(9) The Attorney General shall review the recommendation of the council and determine whether to:

(a) Approve all or part of an application for reimbursement; or

(b) Deny an application for reimbursement.

(10) If the Attorney General approves all or part of an application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.

(11) An application for reimbursement of the costs of protective services may be submitted at any time after the protective services have been provided.

Section 5. Application for Advance of Funds. (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.

(2) An advance of program funds shall be limited to a maximum of \$500 for each application for an advance of program funds.

(3) An advance of program funds shall be limited to the payment of the costs of protective services that:

(a) Have been provided by the law enforcement agency to a

victim or witness at risk of harm; and

(b) Cannot be paid with other funds available to the law enforcement agency.

(4) An application for an advance of program funds shall be made on a "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds" form.

(5) An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:

(a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;

(b) It requests an advance of program funds;

(c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;

(d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and

(e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.

(6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.

(7) The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(8) If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:

(a) Sign a statement that he recommends all or part of the advance; and

(b) Submit the application for an advance of program funds to the Attorney General.

(9) The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.

(10) The distribution of an advance of program funds shall be made during the Office of the Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.

(11) The advance of program funds shall be limited to the amount recommended by the prosecutor.

(12) The advance of program funds shall be made payable to the:

(a) Law enforcement agency;

(b) Head of the law enforcement agency; or

(c) Authorized agent of the head of the law enforcement agency.

(13) The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.

(14) The law enforcement agency shall:

(a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor, and

(b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.

(15) The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.

(16) A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:

(a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;

(b) Received an advance of program funds; and

(c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs. (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice

of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.

(2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.

(3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.

(4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:

(a) Funding has been obligated; and

(b) If additional funding for the program becomes available, applicants:

1. Will be notified; and

2. May resubmit applications for funding.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-01 (7/98)";

(b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (7/98)"; and

(c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (7/98)".

(2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALBERT B. CHANDLER, III, Attorney General

DAVID H. MACKNIGHT, Deputy Attorney General

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David H. MacKnight

(1) Type and number of entities affected: The Kentucky State Police, all sheriffs offices, county police departments, city police departments, Commonwealth's attorneys and county attorneys.

(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: Not applicable.

(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: Not applicable.

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

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal administrative cost.

2. Continuing costs or savings: Minimal administrative cost.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal paperwork processing.

(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: 1998 Ky. Acts ch. 616, Part I, Operating Budget, A. Government Operations, 5. Attorney General.

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

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Victim and witness protection programs in other states were assessed. The language of 1998 Ky. Acts ch. 606, sec. 50 requires the procedures specified in this 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: This administrative regulation establishes a program to provide funding to law enforcement agencies for protective services provided to crime victims and witnesses and their immediate families who are at substantial risk of serious imminent physical injury.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Most law enforcement agencies in Kentucky do not have funds allocated for protective services.

(c) If detrimental effect would result, explain detrimental effect: Funding would not be available for protective services to be provided to crime victims and witnesses and their immediate families who are at substantial risk of serious imminent physical injury.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because 1998 Ky. Acts ch. 606, sec. 50 requires the establishment of uniform requirements and procedures which apply equally to all eligible law enforcement agencies and prosecutors.

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: Sheriffs offices, county police departments, and city police departments.

3. State the aspect or service of local government to which this administrative regulation relates. Law enforcement and the provision of protection services by law enforcement agencies to crime victims and witnesses and their immediate families.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will provide funding to local sheriffs offices and local police departments, on a reimbursement basis, for protective services provided to crime victims and witnesses and their immediate family members who are at substantial risk of imminent serious physical injury. Most law enforcement agencies in Kentucky do not have funds allocated for protective services.

STATEMENT OF EMERGENCY 103 KAR 44:060E

The 1998 Regular Session of the Kentucky General Assembly enacted legislation making significant changes in motor vehicle usage tax valuation procedures and creating an affidavit. The Revenue Cabinet has determined that an administrative regulation should be filed to implement the legislation. An ordinary administrative regulation will not be sufficient since the effective date of the legislation is August 1, 1998. This emergency administrative regulation will be replaced by an ordinary administrative regulation as soon as possible.

PAUL E. PATTON, Governor
SARAH J. SCHAAF, Secretary

**REVENUE CABINET
Department of Law
Division of Tax Policy**

103 KAR 44:060E. Motor vehicle usage tax valuation.

RELATES TO: KRS 138.450 through 138.470
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130, 138.460

EFFECTIVE: August 7, 1998

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 74 enacted by the 1998 Kentucky General Assembly made significant changes in the valuation of motor vehicles for motor vehicle usage tax. KRS 138.460, as amended and effective August 1, 1998, authorizes the Revenue Cabinet to promulgate administrative regulations prescribing documentation necessary to carry out the provisions of HB 74. KRS 131.130(1) authorizes the cabinet to make administrative regulations for the administration of all tax laws. This administrative regulation establishes the form and procedures required for the implementation of House Bill 74.

Section 1. Definitions. (1) "Gift" means the transfer of a motor vehicle from one (1) party to another for no consideration or nominal consideration.

(2) "Rebate" means a reduction in the purchase price of a motor vehicle granted directly to the purchaser by the dealer or to the purchaser or dealer by the manufacturer.

Section 2. The following special valuation procedures are prescribed:

(1) For purposes of establishing retail price for used motor vehicles when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be the average retail value as listed in the appropriate automotive reference manual prescribed in Section 3 of this administrative regulation.

(2) For purposes of establishing retail price for used motor vehicles whose values do not appear in the automotive reference manuals prescribed by the cabinet, and when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be determined by the cabinet.

(3) For purposes of establishing retail price for motor vehicles previously registered in another state or country by nonresident military personnel, retail price shall be the average trade-in value from the appropriate automobile reference manual prescribed in Section 3 of this administrative regulation.

(4) For purposes of establishing retail price for used vehicles of the current model year for which an average retail value has not been published in one (1) of the reference manuals prescribed by the cabinet, retail price shall be eighty-five (85) percent of the manufacturer's suggested retail price (MSRP), including the MSRP of optional equipment and destination charges.

Section 3. The following automotive reference manuals are prescribed for the valuation of the motor vehicles contained therein for motor vehicle usage tax, listed in order of prescribed use:

- (1) Automobiles and light trucks:
 - (a) NADA Official Used Car Guide®.
 - (b) NADA Official Older Used Car Guide.
 - (c) NADA Classic Collectible and Special Interest Car Appraisal Guide.
 - (d) Value Guide to Cars of Particular Interest®.
- (2) Other trucks:
 - (a) NADA Official Commercial Truck Guide®.
 - (b) The Truck Blue Book®.
 - (c) The Older Truck Blue Book®.
 - (d) The Truck Body Blue Book®.
- (3) Miscellaneous vehicles:
 - (a) NADA Recreational Vehicle Appraisal Guide.
 - (b) NADA Van/Truck Conversion and Limousine Appraisal Guide.

(c) NADA Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide.

(d) Hap Jones Motorcycle Blue Book®.

(4) General use: Automotive Invoice Service New Car Cost Guide.

Section 4. When an affidavit of total consideration given is not available and a retail price based on MSRP is prescribed by statute, a copy of the window sticker or other documentation from the manufacturer showing MSRP and listing the base price, itemized options and transportation charges shall be provided the county clerk when a new automobile is presented for registration. An itemized statement showing the MSRP of any additional options installed by the dealer and not reflected on the window sticker shall also be provided the county clerk. In the event the manufacturer's documentation does not include complete MSRP information, the cabinet shall obtain such information from available sources. In the absence of MSRP information on the manufacturer's invoice to the dealer, the dealer shall provide the county clerk a copy of the manufacturer's invoice and, in addition, provide an itemized list of all options whether installed by the manufacturer or dealer, plus transportation charges. Taxable valuation shall then be determined through the use of MSRP information provided in the price reference manual or other source prescribed by the cabinet.

Section 5. Application of Rebates. (1) A rebate provided at the time of purchase and applied to the purchase of the vehicle shall not be included in total consideration given.

(2) A rebate applied to the down payment and not shown as a reduction in the price of the vehicle shall be included in total consideration given.

(3) Rebates mailed directly to the customer are not considered to be provided at the time of purchase of the vehicle and shall be included in total consideration given.

Section 6. Incorporation by Reference. (1) Revenue Form 71A100, Affidavit of Total Consideration Given for a Motor Vehicle, June 1998 edition, is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH JANE SCHAAF, Secretary

ALEX W. ROSE, Commissioner

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 7, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Edward A. Mattingly

(1) Type and number of entities affected: County clerks in all Kentucky counties will be affected by this regulation. All Kentucky sellers and buyers of motor vehicles will be affected by this regulation. There are approximately 3,200 motor vehicle dealers in Kentucky who will be affected by this regulation. Motor vehicle dealers and other sellers outside Kentucky who sell to Kentucky residents will also be affected by this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although almost every adult in Kentucky can be affected by the provisions of this regulation, since the purpose of the regulation is to clarify statutory language, prescribe reference manuals and reference a form required by the statute, there should be no impact on the cost of living or employment in the affected area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The statutory change necessitating this regulation will result in a tax reduction of approximately six million dollars. Two million dollars of that amount will benefit purchasers of large trucks. This should benefit businesses across the state and could encourage interstate carriers to relocate in Ken-

tucky. The statute change may also increase automobile sales in Kentucky.

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

1. First year following implementation: County clerks and some motor vehicle dealers will incur slight costs in reprogramming computer print programs to accommodate the new affidavit. Some county clerks and dealers will incur cost if they choose to subscribe to additional reference manuals.

2. Second and subsequent years: Some county clerks and dealers will continue to incur costs if they choose to subscribe to additional reference manuals.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Revenue Cabinet will incur additional printing costs of approximately \$100,000 in the first year. Costs to modify mainframe computer programs are expected to be approximately \$20,000. Training cost to the cabinet will be approximately \$5,000 in the first year. Educational materials will cost the cabinet approximately \$3,000 the first year. There should not be additional cost to the cabinet for reference manuals. Although the regulation prescribes manuals not presently in use, the use of affidavits will enable the cabinet to reduce the number of total subscriptions.

2. Continuing costs or savings: The ongoing printing costs to the cabinet will be approximately \$100,000 per year. Educational materials will cost approximately \$2,000 per year. There should not be additional cost to the cabinet for reference manuals. Although the regulation prescribes manuals not presently in use, the use of affidavits will enable the cabinet to reduce the number of total subscriptions. Additional compliance costs to the cabinet should be approximately \$60,000 per year.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: There are no additional requirements.

(4) Assessment of anticipated effect on state and local revenues: The statutory change will reduce state road fund revenue approximately six million dollars annually. Three percent of that amount would have been retained by the county clerks. A portion of that would have ultimately been received by the county fiscal court. If the new valuation procedure is not adequately complied, these numbers could easily quadruple.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue Cabinet 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: Some automobile dealers believe that the statutory valuation procedure change will stimulate automobile sales and partially offset lower valuations.

(b) Kentucky: Some automobile dealers believe that the statutory valuation procedure change will stimulate automobile sales and partially offset lower valuations.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 138.460 requires the cabinet to designate a reference manual value to be used in the event an affidavit if total consideration signed by the buyer and seller is not available. The cabinet chose average retail value. Average trade-in was rejected because the cabinet believes the intent of the General Assembly was for the valuation system to be based on total consideration given. Reference manual values are prescribed only in the event an affidavit is not available. Designation of average retail value will encourage use of affidavits whereas use of average trade-in value would have undermined the affidavit system by providing a desirable alternative to paying tax on what was paid for the vehicle. Had that been the intent of the General Assembly, the cabinet believes average trade-in would have been prescribed by statute instead of the affidavit system.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

There should be no effects on public health or the environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not implementing this regulation would not effect public health or the 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 known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied. The requirements of this regulation apply to every motor vehicle buyer and seller.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect: All county clerk offices will be affected.

3. State the aspect or service of local government to which this administrative regulation relates: County clerks are responsible for titling and registering motor vehicles. Motor vehicle usage tax is collected at the time a vehicle is registered in Kentucky for the first time and when a vehicle previously registered is transferred.

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. The clerks receive a three percent commission for providing this service. The statute change is projected to result in a revenue decrease to the road fund of approximately six million dollars annually. Consequently, statewide clerk offices would see a decrease in commission of approximately \$180,000. Although the Revenue Cabinet attempts to provide an adequate supply of prescribed reference manuals to county clerk offices, there may be additional costs to those county clerks who choose to subscribe to additional prescribed reference manuals. County clerks will incur slight one time costs in reprogramming computer print programs to accommodate the new affidavit.

Expenditures (+ \$10,000)

Revenues (- \$180,000)

STATEMENT OF EMERGENCY 200 KAR 5:021E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation, 200 KAR 5:021E, should be enacted on an emergency basis in order to implement, through the provision of KRS 45A.100, enhancements to the Procurement Card Program. Projected cost savings identified by the Empower Kentucky Simplified Administrative Services Team and attributed to the proposed changes/enhancements to the Procurement Card Program were enacted in the 98-00 biennium budget, thus reducing agency budgets by the amount of the projected savings. To facilitate and implement provisions of the Procurement Card Program identified in the Empower Kentucky Simplified Administrative Services savings thus allowing agencies to meet their budgets as enacted for the 98-00 biennium budget, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

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

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
EFFECTIVE: July 17, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This amendment updates the 1997 Finance and Administration Cabinet Manual of Policies and Procedures to reflect recent statutory changes.

Section 1. The "Finance and Administration Cabinet Manual of Policies and Procedures (~~[1997 Edition--]~~ Revised 7/17/98 [~~11/97~~)", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administration Cabinet promulgated pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures (~~[1997 Edition--]~~ Revised 7/17/98 [~~11/97~~)" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administration Cabinet, Room 388A, Capitol Annex, Frankfort, Kentucky 40601.

JOHN MCCARTY, Secretary
BOYCE A. CROCKER, Legal Counsel
APPROVED BY AGENCY: July 17, 1998
FILED WITH LRC: July 17, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Donald R. Speer, Commissioner

(1) Type and number of entities affected: All state agencies are either currently using the state's procurement card program or will be implemented by September 1998. Thus, this regulation will affect all state agencies as well as all price contract and utility vendors that accept a bank card for services rendered.

(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. The statewide savings for the procurement card program for the next four (4) fiscal years is estimated at \$28 and \$32 million.

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

1. First year following implementation: Estimated FY99 savings = \$3-5 million.

2. Second and subsequent years: Estimated FY00 savings = \$7-9 million.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As a participant in the statewide procurement card program, the Finance and Administration Cabinet estimates a savings of \$177,000 in FY99 and \$371,000 in FY00 for the business improvements. Additional savings will be realized from the streamlining of central administrative processes such as imprest cash.

2. Continuing costs or savings: FY99 = \$177,000; FY00 = \$371,000

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Not affected.

(4) Assessment of anticipated effect on state and local revenues: Expanded use of the procurement card program facilitates expedited payments to the vendors by the bankcard, faster receipt of goods for our agencies, and a single monthly payment to the bank for our purchases. This process enables the Commonwealth to

maximize investment of state funds for these purchases.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing funds in each 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statewide procurement card program has been determined to be the most cost effective method of payment for small purchases and some price contract purchases.

(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: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(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: N/A

(11) TIERING: Is tiering applied? Tiering was not used because this is intended to be a standard policy that applies to all agencies.

STATEMENT OF EMERGENCY
200 KAR 22:005E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to repeal all administrative regulations relating pilot personnel programs authorized by KRS 18A.400 through 18A.450. KRS 18A.430(1)(a) provides that each agency participating in a pilot personnel program authorized by KRS 18A.400 through 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the pilot personnel program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. KRS 18A.430 provides that pilot personnel programs shall expire no later than July 15, 1998. Thus, in order to repeal the relevant administrative regulations and thus restore the provisions of KRS Chapter 18A which were suspended to allow for pilot personnel programs, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because KRS 18A.430 provides that all pilot personnel programs shall expire no later than July 15, 1998. Once 200 KAR 22:005E is promulgated, all administrative regulations relating to pilot personnel programs will be repealed. There will be no need for an ordinary administrative regulation. Since pilot personnel programs will no longer be authorized by statute, no administrative regulations relating thereto will be necessary or authorized.

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:005E. Repeal of 200 KAR 22:010, 22:020, 22:030, 22:050, 22:060, 22:070, 22:080, 22:090, 22:100, 22:110, 22:120 and 22:130.

RELATES TO: KRS 18A.430(1), 18A.445

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c), 18A.445

EFFECTIVE: July 17, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.400 - 18A.450 provide for the implementation of pilot personnel programs. 18A.430(1)(a) provides that each pilot agency participating in a pilot personnel program authorized by KRS 18A.400 to 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the pilot personnel program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. KRS 18A.445 provides that the Secretary of the Finance and Administration Cabinet shall develop a plan to permit up to fifty (50) percent of any actual savings attributed to a pilot personnel program to be retained and used by the agency and requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to implement the provisions of KRS 18A.445. KRS 18A.430 further provides that pilot personnel programs shall expire no later than July 15, 1998, unless the expiration date is extended by statute. HB 633 requesting an extension did not pass. Thus, all pilot personnel programs shall expire at close of business on July 15, 1998. This administrative regulation will repeal the administrative regulations promulgated to establish the comprehensive employment manuals establishing conditions of employment for employees in pilot personnel programs and establishing procedures for developing a financial plan by agencies implementing a pilot personnel program and establishing the process by which the financial plan will be reviewed and approved.

Section 1. 200 KAR 22:010, Procedures for the development, review and approval of financial plans for savings attributable to personnel pilot programs; 200 KAR 22:020, Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430; 200 KAR 22:030, Comprehensive Employment Manual of Department of Vocational Rehabilitation for use in the pilot personnel program; 200 KAR 22:050, Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for use in the pilot personnel program; 200 KAR 22:060, Comprehensive Employment Manual of the Department of Personnel for use in the pilot personnel program; 200 KAR 22:070, Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for use in the pilot personnel program; 200 KAR 22:080, Comprehensive Employment Manual of the Kentucky Veterans Center for use in the pilot personnel program; 200 KAR 22:090, Comprehensive Employment Manual of the Workforce Development Cabinet's Department for the Blind for use in the pilot personnel program; 200 KAR 22:100, Comprehensive Employment Manual of Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units for use in the pilot personnel program; 200 KAR 22:110, Comprehensive Employment Manual of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for use in the pilot personnel program; 200 KAR 22:120, Comprehensive Employment Manual of the Kentucky Department for the Blind: Business Enterprise Program for use in the pilot personnel program; and 200 KAR 22:130, Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations for use in the pilot personnel program, are hereby repealed.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: July 17, 1998

FILED WITH LRC: July 17, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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 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: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, FAX (502) 564-6785.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt

(1) Type and Number of Entities Affected: This regulation will affect all employees who are participating in pilot personnel programs.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: No compliance, reporting or paperwork requirements will result.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(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 on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

policies which are in conflict, overlap, or duplicate the proposed 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? Tiering was not applied. This regulation only applies to agencies and employees who are participating in pilot personnel programs and applies equally to all such agencies and employees.

STATEMENT OF EMERGENCY 301 KAR 2:181E

This emergency administrative regulation establishes the process for applying to deer hunt at certain wildlife management area quota hunts. Hunters are selected for these hunts by random drawing of all applicants. In March, 1998, the Department of Fish and Wildlife Resources Commission approved changing from a paper application system to an automated telephone application process. However, unavoidable delays in awarding a contract for this new system and establishing its final details made it impossible to file an ordinary administrative regulation that would be in effect before the August, 1998, application period began. The department receives federal funds under the Federal Aid to Wildlife Restoration Act. These funds are based on the number of hunting licenses sold. Not conducting quota hunts could decrease license sales and cause a loss of federal funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 301 KAR 2:181 was filed with the Regulations Compiler on July 16, 1998.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:181E. Quota deer hunt procedures.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

EFFECTIVE: July 16, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to fix seasons and make seasons conditional, to make seasons apply to a limited area and to promulgate any other administrative regulation reasonably necessary to implement the provisions of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations for the lands it has acquired. This administrative regulation is necessary to prescribe the method by which a person applies for a drawing used to limit the number of hunters on certain wildlife management area deer hunts. Its function is to achieve proper deer management on wildlife management areas and to promote safety by preventing overcrowding during deer hunts.

Section 1. A person whose name is not selected pursuant to this administrative regulation shall not hunt during:

- (1) Quota hunts listed in 301 KAR 2:178; or
- (2) Hunts listed in 301 KAR 2:179.

Section 2. A person shall apply for a quota hunt drawing through an automated telephone system by:

- (1) Calling 1-887-968-4868 from a touch-tone telephone between August 1 and August 31;
- (2) Providing his Social Security number;
- (3) Indicating his first and second choice of hunts; and
- (4) Paying a three (3) dollar application fee for each application

by:

- (a) Check;
- (b) Money order;

- (c) Visa; or
- (d) MasterCard.

Section 3. Four (4) or fewer persons may apply as a party by providing a Social Security number and paying the application fee for each person.

Section 4. The department shall select hunters by a random drawing of all applicants.

Section 5. A person checking in for a quota hunt shall show:

- (1) His Social Security number;
- (2) Unless exempted by KRS 150.170, a valid Kentucky hunting or combination license; and
- (3) A valid deer permit with an unused carcass tag; or
- (4) The receipt portion of a valid deer permit and:
 - (a) A bonus quota hunt deer permit;
 - (b) If the quota hunt is in a zone one county as defined by 301 KAR 2:174, a bonus zone one antlerless deer permit; or
 - (c) If the person will hunt with bow or crossbow, a bonus antlerless archery deer permit.

Section 6. (1) A person who was not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(2) Beginning in 1999, a random selection of those with preference points will be made for each year's quota hunts before those without preference points are chosen.

Section 7. The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: July 16, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately deer hunters are expected to apply for quota hunts on wildlife management areas. Of these, approximately will be drawn to hunt.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of doing business.

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

1. First year following implementation: This administrative regulation decreases paperwork and reporting requirements by replacing a paper application system with an automated telephone application system.

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: An estimated \$6,000 will be saved by converting to an automated application system.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements will be virtually eliminated; reporting will be automated.

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

(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: No significant economic impacts.

(b) Kentucky: No significant economic impacts.

(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 area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

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

STATEMENT OF EMERGENCY

301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent was filed with the Regulations Compiler on August 10, 1998.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET

Department of Fish and Wildlife Resources

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

RELATES TO: KRS 150.025(1), 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

EFFECTIVE: August 10, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate an administrative regulation restricting the methods for the taking of wildlife. This administrative regulation allows the taking of migratory game birds within reasonable limits based upon an adequate supply, and

within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Migratory game bird" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.

(2) A person may hunt ~~(44) Doves~~:

(a) Dove beginning on:

1. September 1 for thirty (30) consecutive days;

2. The first Saturday in October for twenty-four (24) consecutive days; and

3. Thanksgiving Day for six (6) consecutive days.

(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.

(c) Common snipe: beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) ~~September 1 through September 30; October 4 through October 27; and November 27 through December 2.~~

(2) Woodcock: ~~October 18 through December 1.~~

(3) Common snipe: ~~September 17 through November 2 and November 27 through January 25.~~

(4) ~~Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days. [September 17 through September 21.]~~

(a) ~~[(5)] Virginia and sora rails, common moorhen and purple gallinule: Beginning on September 1 for seventy (70) consecutive days. [September 1 through November 9.]~~

Section 3. Bag and Possession Limits. A person shall not exceed the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, three (3); possession limit, six (6).

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal:

(a) Daily limit, four (4), which shall not include more than two (2) wood ducks;

(b) Possession limit, eight (8), which shall not include more than four (4) wood ducks.

(7) A person shall leave the head or one (1) fully feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From one-half (1/2) hour before sunrise to sunset during the November and December portions of the season.

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

Section 5. Shot Requirements. A person hunting wood duck or teal shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Section 6. [Youth Hunting Day. (1) A person who has not reached his 16th birthday may hunt duck, coot or merganser on October 11.

(2) A person at least eighteen (18) years old shall accompany the juvenile hunter and:

(a) Shall not hunt duck, coot or merganser;

(b) May hunt another species for which there is an open season.

(3) The bag limits for the youth hunting day shall be:

(a) Ducks: six (6), which shall not include more than:

1. Four (4) mallards, no more than two (2) of which shall be hen mallards;

2. Three (3) pintails;

3. Two (2) wood ducks;

4. Two (2) redheads;

5. One (1) canvasback; or

6. One (1) black duck.

(b) Fifteen (15) coots; and

(c) Five (5) mergansers, no more than one (1) of which shall be a hooded merganser.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) On a wildlife management area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting;

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Barlow Bottoms, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River or Westvaco Wildlife Management Area shall not use or possess a shotgun shell containing lead shot.

(3) Ballard Wildlife Management Area. A person shall not hunt a migratory game bird after October 13, except as provided in 301 KAR 2:221.

(4) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt a migratory game bird after October 13, except as provided in 301 KAR 2:221.

(b) A dove hunter shall not carry a firearm except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) A migratory game bird hunter shall check in and out daily at a designated check station.

(b) A person shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person shall not hunt dove, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) Dove after September 30 [October 13], except on tracts 2, 3, 6, and 7 [during the November and December portions of the season].

(b) Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) On a tract designated by a number followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter shall check in and out daily.

(9) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 7. [8.] Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

SCOTT PORTER, Tourism General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: August 10, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

(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 will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no reporting or paperwork requirements.

2. Second and subsequent years:

Same as for first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory game birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between the Saturday nearest September 22, 1997, and January 31, with a 45 day maximum season. Bag limits may be a maximum of three per day with six in possession. Wood duck and teal - season frameworks allow five days in September. Bag limits may total four per day with not more than two of these being wood ducks. Possession limit is eight of which not more than four may be wood ducks. Dove - season frameworks allow either 70 or 60 days between September 1 and January 15. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season. Common snipe - season frameworks allow a 107 day season between September 1 and February 28. Bag and possession limit is 8 and 16, respectively. Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1 and January 20. Bag and possession limit of 25 per day, singly or in aggregate. Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1 and January 20. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

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.

STATEMENT OF EMERGENCY

301 KAR 6:005E

This emergency administrative regulation establishes boat registration fees for the various classes of motorboats. 1998 RS HB 717 removed these fees from statute and granted the department the authority to promulgate boat registration fees by administrative regulation. There was not sufficient time between the enactment and the effective date of this legislation to promulgate an ordinary administrative regulation. This emergency administrative regulation is necessary to allow individuals to continue to register motorboats in

Kentucky and to meet the statutory deadline imposed by the July 15 effective date of 1998 RS HB 717. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with Regulation Compiler on July 16, 1998.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 6:005E. Boat registration fees.

RELATES TO: KRS 235.040, 235.050, 235.070, 235.080

STATUTORY AUTHORITY: 1998 RS HB 717

EFFECTIVE: July 16, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 717 removed boat registration fees from statute and granted the department the authority to set these fees by administrative regulation. This administrative regulation establishes the registration fees for the various classes of motorboats.

Section 1. The annual registration fees shall be for motorboats:

(1) With electric motors as the sole source of propulsion - five (5) dollars.

(2) With outboard motors:

(a) Class A - ten (10) dollars.

(b) Class 1 - fourteen (14) dollars.

(c) Class 2 - twenty (20) dollars.

(d) Class 3 - twenty-four (24) dollars.

(3) Any class, with inboard or inboard-outboard motors - twenty-four (24) dollars.

C. THOMAS BENNETT, Commissioner
MIKE BOATWRIGHT, Chairman
ANN R. LATTA, Secretary
DOUGLAS SCOTT PORTER, Assistant Attorney General
APPROVED BY AGENCY: July 15, 1998
FILED WITH LRC: July 16, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 158,000 boats are registered in Kentucky annually. This administrative regulation does not raise or lower boating fees. Pursuant to 1998 RS HB 717, it moves boat registration fees from statute (KRS 235.080) to administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change in costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change in 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: This administrative regulation imposes no new compliance, reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No new 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: 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: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since HB 717 mandates that boat registration fees be set by administrative regulation, there is no alternative but to set boat fees by 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 environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

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

STATEMENT OF EMERGENCY 702 KAR 7:125E

This emergency administrative regulation, as approved by the Kentucky Board of Education, provides guidelines for the recording of student attendance. The proposed amendment modifies procedures to comply with recent statutory changes that go into effect July 15, 1998. This emergency administrative regulation is necessary for local school districts to implement requirements for the 1998-99 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL PATTON, Governor
HELEN MOUNTJOY, Chairperson

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

702 KAR 7:125E. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

EFFECTIVE: August 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030, 158.100, and 159.030 require the age for compulsory school attendance; KRS 158.060 defines the school day and month and make-up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance rec-

ords to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days [hours] equal to the greatest number of days [hours] missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar. [may miss up to a total of five (5) hours each school year as a result of school days shortened due to emergency without making up those hours.]

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(3) A local board of education request for disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content [activities] included in the "Program of

Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies which have been certified by a letter of assurance and compliance pursuant to 704 KAR 3:305; [not included in the "Program of Studies for Kentucky Schools, Grades Primary-12", which have been approved for the current school year by the Commissioner of Education pursuant to 704 KAR 10:050;]

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods (each class), and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 6. (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure, parent or legal guardian signature and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of [instructional time in] the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of [one (1) to thirty-four (34) percent of instructional time in] the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of [instructional time in] the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of [eighty-five (85) to 100 percent of instructional time in] the regularly scheduled school day for his grade level.

(5) The percentages described in this section shall apply to the regularly scheduled school [instructional] day approved by the local board of education and are [is] applicable to entry level through grade level twelve (12).

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 11. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil that is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 12. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 14. The superintendent's annual attendance report shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320. Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 15. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 16. [15:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W6, W7, [W10:] W13, [W14:] W16 or W18 during the previous

school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(11) R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(12) R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling local school district, prior to the completion of the expulsion period;

(13) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1.

(14) ~~(12)~~ W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(15) ~~(13)~~ W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W3 shall be R3;

(16) ~~(14)~~ W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(17) ~~(15)~~ W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(18) ~~(16)~~ W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age, ~~has completed the required sixty (60) day waiting period pursuant to KRS 159.040~~ and has withdrawn. The reentry code to use with W6 shall be R6;

(19) ~~(17)~~ W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(20) ~~(18)~~ W08 - A pupil withdrawn due to death;

(21) ~~(19)~~ W09 - A pupil graduated prior to the end of the school term or year;

(22) ~~(20)~~ W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be R6 if the student returns to the expelling local school district in the current school year after the expulsion period has been completed. The reentry code to use with W10 shall be R10 if the student returns to the expelling local school district in the current school year prior to completion of the expulsion period; [discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;]

(23) W11 - A pupil who has been expelled for behavioral reasons withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be R6 if the student returns in the current school year after the expulsion period has been completed. The reentry code to use with W11 shall be R11 if the student returns in the current school year prior to completion of the expulsion period.

(24) ~~(21)~~ W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(25) ~~(22)~~ W13 - A pupil withdrawn for a second or subsequent

time who initially withdrew as a W6, W7, W10, W13, ~~[W14;]~~ W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

~~[(23) W14 - A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;]~~

(26) ~~[(24)]~~ W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(27) ~~[(25)]~~ W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and

(28) ~~[(26)]~~ W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R6.

Section 17. (1) The following suspension codes shall be used to indicate the suspension status of pupils;

(a) S - Suspension for one (1) full day; and

(b) N - Suspension for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 18. The following expulsion codes shall be used to indicate the expulsion status of pupils;

(1) XP1 - A student expelled from school during the current school year for behavioral reasons, being provided educational services by the expelling local school district;

(2) XP2 - A student expelled from school during the current school year for behavioral reasons, being provided educational services by a regional alternative facility not run by the expelling local school district;

(3) XP3 - A student expelled from school during the current school year for behavioral reasons, not being provided educational services;

(4) XE1 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by the local school district;

(5) XE2 - A student expelled from another local school district during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by a regional alternative facility not run by the expelling local school district; and

(6) XE3 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is not being provided educational services.

Section 19. ~~(16;)~~ The following ethnic codes shall be used to indicate the ethnic origin of pupils until June 30, 2000:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - Other.

Section 20. Beginning July 1, 2000, the following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) H - Hispanic or Latino - A person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race; and

(2) N - Not Hispanic or Latino.

Section 21. (1) Beginning July 1, 2000, the following race codes shall be used to indicate the racial categories of pupils:

(a) W - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(b) B - Black or African American - A person having origins in any of the black racial groups of Africa;

(c) H - Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

(d) A - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam;

(e) I - American Indian or Alaska Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains tribal affiliation or community attachment; and

(2) More than one (1) racial category may be selected. Local school districts shall be able to identify the number of students that have selected more than one (1) racial category as described in this section.

Section 22. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report prior to June 30 of each year.

(2) [17-] The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [13-] The "Growth Factor Report" file layout, dated June 1, 1998;

(b) [July 1, 1996, and] The "Superintendent's Annual Attendance Report" file layout, dated July 1, 1996; and

(c) The "Student Dropout Questionnaire" dated June 1, 1998. [are incorporated herein by reference and may be obtained, copied and inspected]

(2) This material may be inspected, copied, or obtained at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILMER S. CODY, Commissioner of Education
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 4, 1998
FILED WITH LRC: August 6, 1998 at 2 p.m.

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: Amendments to the regulation are made to conform with current statutes.

(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.

STATEMENT OF EMERGENCY 704 KAR 20:720E

This emergency administrative regulation establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. It is necessary to promulgate this administrative regulation as an emergency in order to comply with KRS 161.048. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor
SUSAN LEIB, Associate Commissioner

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board

704 KAR 20:720E. Professional certificate for exceptional work experience, limited to secondary education.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for and renewal of a professional certificate for secondary education. This administrative regulation is not required by federal law.

Section 1. Definitions. (1) Exceptional experience means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) Secondary education means the area in which certification is sought in any subject taught in grades 9 - 12 in a Kentucky school.

Section 2. Verification of exceptional qualifications of an appli-

cant for certification, in a field of endeavor taught or service practiced in the public schools of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one (1) who has exceptional work experience as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the new teacher standards established in 704 KAR 20:670, Section 6;

(2) Documentation of achievement that may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field of endeavor; and

(3) Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional work in the field.

Section 3. Certification Requirements. An eligible candidate who meets the requirements of KRS 161.048(1) and character and fitness review established in KRS 161.040 shall be issued the provisional certificate, limited to secondary education and valid for one (1) year. Upon successful completion of the Kentucky Teacher Internship Program as established in KRS 161.030(5) to 161.030(8), the professional certificate, limited to secondary education shall be issued and shall be valid for an additional four (4) years.

Section 4. Renewal Requirements. Each five (5) year renewal of the professional certificate identified in Section 3 of this administrative regulation shall meet the renewal requirements established in 704 KAR 20:060.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All candidates for this certificate.

(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.

STATEMENT OF EMERGENCY 705 KAR 4:240E

This emergency administrative regulation, as approved by the Kentucky Board of Education, provides direction to implementation of a school to careers system. This administrative regulation establishes the request for proposal process, the criteria for grant awards, the responsibility of local school districts and consortia of districts in implementation of a school to careers system, and the evaluation of the program. The proposed amendment modifies procedures to comply with recent statutory changes that go into effect July 15, 1998. This emergency administrative regulation is necessary for local school districts to implement requirements for the 1998-99 school year and to enable distribution of school to careers grant awards to local school districts for the 1998-1999 school year, consistent with the 1998 General Assembly appropriation for this purpose. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL PATTON, Governor

HELEN MOUNTJOY, Chairperson

EDUCATION, ARTS, AND HUMANITIES
Kentucky Board of Education
Department of Education
Office of Special Instructional Services

705 KAR 4:240E. School to careers.

RELATES TO: KRS 156.160, 1998 Ky. Acts ch. 444

STATUTORY AUTHORITY: KRS 156.070, 1998 Ky. Acts ch. 444

EFFECTIVE: August 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 444, relating to a school to careers system, requires the Kentucky Board of Education to promulgate administrative regulations to establish the request for proposal process, the criteria for grant awards, the responsibilities of local school districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of the programs. This administrative regulation addresses these areas to enable distribution of school to careers grants.

Section 1. A local board of education or consortia of school districts shall operate a school to careers system, which may include school-to-work, tech prep, and high schools that work, for all students.

Section 2. (1) Funds shall be made available to an eligible local board of education or consortia of school districts through a Request for Proposal (RFP) process in which a local board of education or consortia of school districts agrees to develop, implement, and evaluate a schools to careers system.

(2) Eligibility for grant awards shall be based on the proposals that include a plan to address the following:

(a) Improvement in student achievement of math, science, communication, social studies, and technical skill (multiple assess-

ments);

(b) Improvement in successful transition rates (KIRIS or CATS successful transition results may be utilized);

(c) Reduction in student drop-out rates (KIRIS or CATS drop-out results may be utilized);

(d) Reduction in percent of students requiring remediation at the postsecondary level;

(e) Percent of students utilizing an individual graduation plan;

(f) Percent of students participating in programs which are utilizing occupational skill standards;

(g) Percent of students receiving skill standards certification;

(h) Percent of students receiving a career major certificate;

(i) Percent of students participating in work-based learning at the elementary, middle, and high school level (utilizing the school-to-work data collection system);

(j) Percent of students participating in articulation agreements with postsecondary institutions;

(k) Percent of faculty and staff participating in business and industry externships;

(l) Number of business, industry, and labor participants actively involved in the school to careers initiative; and

(m) Planned instructional programs to meet the needs of students with disabilities and other special needs.

(3) Grant funds may be used to enhance on-going efforts such as tech prep, school-to-work, and high schools that work initiatives.

(4) Each grantee shall be responsible for a criterion that has not been implemented or that needs to be enhanced as listed in subsection (2) of this section.

(5) Criteria listed in subsection (2) of this section shall be used for annual program evaluation to determine progress and success.

Section 3. (1) The level of funding available shall be based on the total funding appropriated by the General Assembly during each year of the biennium.

(2) In determining the level of grant funding, consideration shall be given to the following:

(a) The need and previous activities;

(b) The amount of other grant funds which a school district or consortia of school districts may be receiving from other school to careers programs including school-to-work, tech prep, and high schools that work;

(c) The number of students being served; and

(d) The level of proposed implementation activities.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 2 p.m.

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.

STATEMENT OF EMERGENCY

806 KAR 15:040E

This emergency administrative regulation establishes the licensing, reporting, and other general requirements for viatical settlement brokers and providers doing business in the Commonwealth of Kentucky. This emergency administrative regulation also establishes disciplinary procedures for persons who hold a license as a viatical settlement provider or broker. 1998 Ky. Acts ch. 403 created jurisdiction with the Department of Insurance over viatical settlement agreements in order to protect the interests of the general public, insureds wishing to enter into viatical settlement agreements, and the industry. The Act requires the Commissioner of Insurance to promulgate administrative regulations to provide for the licensing of viatical settlement providers and brokers and the termination or revocation of the license. An emergency administrative regulation is required to establish licensing and disciplinary procedures for viatical settlement brokers and providers doing business within the Commonwealth of Kentucky as of July 15, 1998, the effective date of 1998 Ky. Acts ch. 403. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 15:040E. Licensing, reporting, and general requirements for viatical settlement providers and brokers.

RELATES TO: 1998 Ky. Acts ch. 403

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 403, sec. 2(2), 6(1)

EFFECTIVE: July 21, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 403, secs. 2(2) and 6(1) provide that the commissioner shall promulgate administrative regulations to provide for the licensing of viatical settlement providers and brokers, the termination or revocation of the license, and for the implementation of 1998 Ky. Acts ch. 403.

Section 1. Definitions. (1) "Catastrophe or life-threatening illness or condition" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

(2) "insured" means the person covered under the policy being considered for viatication.

(3) "Insurer" means the entity or insurance company issuing the life insurance policy of the insured, or its assign.

(4) "Life expectancy" means the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as would be determined by an independent medical review considering available medical records.

(5) "Net face amount" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

(6) "License" as used in the Act and this administrative regulation, means a license issued to a viatical settlement provider or viatical settlement broker, and shall be a limited license that allows solicitation or provision of viatical settlements only.

(7) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(8) The definition of "viatical settlement broker" shall be governed by 1998 Ky. Acts ch. 403, sec. 1(4).

(9) The definition of "viatical settlement contract" shall be governed by 1998 Ky. Acts ch. 403, sec. 1(5).

(10) The definition of "viatical settlement provider" shall be governed by 1998 Ky. Acts ch. 403, sec. 1(6).

(11) The definition of "viator" shall be governed by 1998 Ky. Acts ch. 403, sec. 1(7).

Section 2. Viatical Settlement Contract and Form Approval. (1)

Any person using a viatical settlement contract in this state shall submit the contract to the commissioner for approval or disapproval.

(2) Each contract submitted to the commissioner for approval shall:

(a) Be written in nontechnical, readily understandable language, utilizing words of common usage;

(b) Specifically set forth the identity of the parties;

(c) Clearly provide space for including the amount of the proceeds payable to the viator;

(d) Specifically set forth the disclosure information as required by 1998 Ky. Acts ch. 403, sec. 4;

(e) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party; and

(f) Provide for a specific notice to the viator of the viator's right to rescind the contract, without penalty, as set forth in 1998 Ky. Acts ch. 403, sec. 4(5).

(3) The commissioner may review any previously approved viatical settlement contract for compliance with the Act and this administrative regulation.

(4) If the commissioner disapproves any proposed viatical settlement contract, or withdraws approval of any viatical settlement contract, the person submitting the contract for approval may request a hearing pursuant to KRS 304.2-310 (2)(b). If the hearing is requested and held, the burden of proof shall be upon the proponent of the proposed contract.

Section 3. Viatical Settlement Broker License. (1) On or after

July 15, 1998, any individual, partnership, corporation, or other entity acting as a viatical settlement broker shall obtain a license from the commissioner.

(2) Each viatical settlement broker license shall be in effect for a period of two (2) years and renewable upon submission to the commissioner of a new application and the nonrefundable fee established by this administrative regulation.

(3) Each viatical settlement broker license shall expire on December 31, 2000, and biannually thereafter on December 31st unless renewed.

(4) Each individual applicant for licensure as a viatical settlement broker shall:

(a) Be at least twenty-one (21) years of age;

(b) Have successfully attained a general educational level equivalent to that required for graduation from an accredited high

school in this state; and

(c) Provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.

(5) A firm or corporation applying for licensure as a viatical settlement broker shall meet the following requirements:

(a) If a firm, or other unincorporated entity, each general partner or other individual to act for the firm under the license shall:

1. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

2. Be licensed as an individual viatical settlement broker.

(b) If a corporation, each individual authorized by the corporation to act for it under the license shall:

1. Be listed by the corporation in its application;

2. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

3. Be licensed as an individual viatical settlement broker.

(6) A viatical settlement broker shall acquire and maintain an errors and omissions policy in an amount commensurate with the broker's exposure.

(7) Each application for initial licensure or renewal shall be made on Form VSP/B which is incorporated by reference into this administrative regulation.

(8) Each application for licensure and renewal of license shall be accompanied by a nonrefundable fee in the appropriate amount as follows:

(a) \$250 dollars if the applicant is an individual; or

(b) \$750 dollars if the applicant is a corporation or firm.

Section 4. Viatical Settlement Provider License. (1) On or after July 15, 1998, any individual, partnership, corporation, or other entity acting as a viatical settlement provider shall obtain a license from the commissioner.

(2) Each viatical settlement provider license shall be in effect for a period of two (2) years and renewable upon submission to the commissioner of a new application and the nonrefundable fee established by this administrative regulation.

(3) Each viatical settlement broker license shall expire on December 31, 2000, and biannually thereafter on December 31st unless renewed.

(4) Each individual applicant for licensure as a viatical settlement provider shall:

(a) Be at least twenty-one (21) years of age;

(b) Have successfully attained a general education level equivalent to that required for graduation from an accredited high school in this state;

(c) Provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.

(5) A firm or corporation, applying for licensure as a viatical settlement provider shall meet the following requirements:

(a) If a firm, or other unincorporated entity, each general partner or other individual to act for the firm under the license shall:

1. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

2. Be individually licensed as a viatical settlement provider.

(b) If a corporation, each individual authorized by the corporation to act for it under the license shall:

1. Be listed by the corporation in its application;

2. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

3. Be individually licensed as a viatical settlement provider.

(6) A viatical settlement provider shall acquire and maintain an errors and omissions policy in an amount commensurate with the provider's exposure.

(7) Each application for initial licensure or renewal shall be made on Form VSP/B which is incorporated by reference into this administrative regulation.

(8) Each application for licensure and renewal of license shall be accompanied by a nonrefundable fee in the appropriate amount as follows:

(a) \$500 dollars if the applicant is an individual; or

(b) \$1500 dollars if the applicant is a corporation or firm.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Section 5. Denial, Suspension, or Revocation of License. The commissioner may deny any application for a license or may suspend or revoke a license, or may refuse to renew a viatical settlement provider or broker license if the commissioner finds that the applicant or licensee:

- (1) Has made any material misrepresentation on the application;
- (2) Has been adjudicated guilty, either by verdict or plea agreement, to a felony or misdemeanor offense involving breach of trust, fraud, or theft;
- (3) Has been guilty of fraudulent, deceptive, or dishonest practices, as defined in KRS Chapter 304, Subtitle 12;
- (4) Has had a similar license suspended or revoked in any other jurisdiction;
- (5) Has demonstrated a pattern of unreasonable payments to viators, or shown to be untrustworthy or incompetent to act as a viatical settlement broker or provider; or
- (6) Has violated any provision of the Kentucky Insurance Code, KRS Chapter 304, or this administrative regulation.

Section 6. Other Licenses and Disciplinary Actions. (1) A licensee, whether an individual, corporation, or firm, shall notify the Department of Insurance, in writing, of any disciplinary action taken by any governmental agency, either in this state or in another jurisdiction, against any other license held by the individual, corporation, or firm, within thirty (30) days of the initiation of such disciplinary action.

(2) Failure to report such disciplinary action shall be grounds for suspension, revocation, or other disciplinary action within the discretion of the commissioner.

Section 7. Prohibited Practices. (1) A viatical settlement provider or broker shall not provide patient-identifying information to any person unless:

(a) The insured and viator provide informed written consent to the release of the patient-identifying information; or

(b) The viatical settlement provider or broker is compelled, pursuant to subpoena to produce the patient-identifying information.

(2) If patient-identifying information is divulged pursuant to subsection (1)(a) of this section, a viatical settlement provider or broker shall obtain, from the person to whom the information is provided, a signed affirmation that the person will not further divulge the information without procuring the express written consent of the insured. The person shall obtain the express written consent of the insured each time the patient-identifying information is to be further divulged.

(3) If a viatical settlement provider or broker is served with a subpoena and, therefore, compelled to produce records containing patient-identifying information, the viatical settlement provider or broker shall notify the viator and the insured within five (5) business days after receiving notice of the subpoena.

(4) A viatical settlement provider shall not act also as a broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement or viatical loan agreement.

(5) A viatical settlement provider shall not use a longer life expectancy than is reasonable in order to reduce the minimum payout to which the viator is entitled.

(6) A viatical settlement provider or broker shall not pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee.

Section 8. Designation of Process Agent. A viatical settlement provider or broker that is licensed pursuant to 1998 Ky. Acts ch. 403 and this administrative regulation and whose domicile and place of business is outside Kentucky shall designate the Secretary of State of the Commonwealth of Kentucky as the agent for the service of process.

Section 9. Disclosure. (1) Each viatical settlement provider shall, either directly or through a broker, provide a written disclosure form to the viator at the time of solicitation for the viatical settlement and again at the time the viatical settlement contract is signed by each party to the contract.

(2) The disclosure form required by subsection (1) of this section shall:

- (a) Contain the name of the viatical settlement provider;

- (b) Clearly state that the document is a disclosure form;
- (c) Contain language that is identical or substantially similar to the following:

"Provider/Company Name
Disclosure Form

Viaticating Your Life Insurance Policy?

Are you thinking about viaticating your life insurance policy? If you are, your decision could be a good one -- or a mistake. You will not know for sure unless you carefully consider all of the options available to you and the consequences of viaticating your life insurance policy.

We are required to inform you of the following:

- Make sure you understand the facts. You should ask your insurance company to review all the possible alternatives, such as an accelerated benefit rider, that your life insurance policy may offer in lieu of a viatical settlement.

- Compensation from a viatical settlement may be taxable. You should seek assistance from a personal tax advisor.

- The proceeds from a viatical settlement may be subject to the claims of creditors.

- Compensation from a viatical settlement may affect your eligibility for medical assistance or other government benefits or entitlements. You should seek advice from the appropriate government agencies.

- You have the right to rescind your viatical settlement contract within thirty (30) days of the date the agreement was signed by the parties or fifteen (15) days of the receipt of the viatical settlement proceeds, whichever occurs first.

- We are required to disclose to you the date by which the viatical settlement funds.

- The viatical settlement broker is presumed to represent this viatical settlement provider, unless you have obtained a prior written agreement to the contrary from the broker. If the broker represents this viatical settlement provider, he cannot seek or obtain any compensation from you.

Review all options and issues before you decide. This way you can be sure you are making a decision that is in your best interest."

(d) Be signed and dated by the applicant; and

(e) Be signed by an authorized representative of the viatical settlement provider.

Section 10. Notification to the Insurer. (1) The viatical settlement provider shall notify the insurer of the viatical settlement agreement and the specific amount to be received by the viator.

(2) The notice required by subsection (1) of this section shall be:

(a) In writing;

(b) Sent by certified U.S. mail to the insurer; and

(c) Sent no less than thirty (30) days prior to the effective date of the viatical settlement agreement.

(3) The viator's insurance company may, within thirty (30) days of the date of notification by the viatical settlement provider, offer to purchase the viator's insurance policy or certificate from the viator.

(4) Any offer by the insurer, made pursuant to subsection (3) of this section, shall render the viatical settlement agreement void if the offer is accepted by the viator.

Section 11. Reporting Requirement. On or before March 1 of each calendar year, each viatical settlement provider licensed in the state of Kentucky shall make a report by state of domicile of the viator and in the aggregate, containing the following information for each viatical settlement agreement that was active during the previous calendar year:

(1) For each policy viaticated:

(a) Date viatical settlement entered into;

(b) State where viatical settlement took place;

(c) Life expectancy of the insured at the time of contract;

(d) Face amount of policy;

(e) Amount paid by the viatical settlement provider to viaticate the policy; and

(f) If the insured has died:

1. Date of death;

2. Amount of time that passed after the date of contract; and

3. Total insurance premiums paid by viatical settlement provider to maintain the policy in force;

- (2) Report of applications received, accepted and rejected, by disease category;
- (3) Report of policies viaticated by issuer and policy type;
- (4) Number of secondary market transactions;
- (5) Number of primary market transactions;
- (6) Aggregate amount of viaticated policies; and
- (7) Report of funding sources.

Section 12. Notice to Investors. (1) Each viatical settlement agreement shall contain a provision specifically stating the following: "The Commonwealth of Kentucky does not guaranty any rate of return on investment for any investor to a viatical settlement provider."

(2) Each viatical settlement provider shall provide a complete copy of the fully executed viatical settlement agreement to each investor.

Section 13. General Rules. (1) Any addition payment on an insurance policy with a double or additional indemnity for accidental death shall be payable to the following:

- (a) The beneficiary last named by the viator prior to entering into the viatical settlement agreement;
 - (b) To any other beneficiary, other than the viatical settlement provider, as the viator may designate; or
 - (c) To the estate of the viator in the absence of a beneficiary.
- (2) A viatical settlement provider or broker shall not discriminate in making viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation.
- (3) A viatical settlement provider or broker shall not discriminate between a viator with a dependent and a viator with no dependent.
- (4) A viatical settlement provider or broker shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

Section 14. Material Incorporated by Reference. (1) Form VSP/B, "Application for License as a Viatical Settlement Provider or Broker (1998 Edition)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, Division of Licensing, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel

APPROVED BY AGENCY: July 16, 1998
FILED WITH LRC: July 21, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: John F. Zink

(1) Type and number of entities affected: This administrative regulation affects persons and entities engaged in the solicitation and sale of viatical settlement agreements to insured individuals. Since the department has not previously licensed or kept statistics regarding viatical settlement providers or brokers, the number of entities affected is unknown at this time.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative regulation will require individuals and entities that intend to engage in the viatical settlement business to be licensed with the Department of Insurance and to file periodic reports regarding their viatical busi-

ness. Persons seeking a license as a viatical settlement provider or broker will be required to pay a licensing fee specified in this administrative regulation.

2. Second and subsequent years: This administrative regulation will require viatical settlement providers and brokers to be licensed biannually and pay a renewal licensing fee. In addition, viatical settlement providers and brokers will be required to report information to the Department on an annual basis.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department personnel will be required to review proposed viatical settlement contract forms, review and issue broker and provider licenses, and review consumer complaints and inquiries. The department anticipates that licensing fees imposed by this administrative regulation will absorb the increase costs associated with processing the licensing applications and the reports.

2. Continuing costs or savings: The costs associated with processing licensing applications for viatical settlement providers and brokers will continue for the second and subsequent years as new and renewal licenses will be issued. The department anticipates that the initial licensing and renewal fees imposed by this administrative regulation will absorb the increase costs associated with processing the licensing applications and the reports.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: These regulations will require the processing of license applications and review of periodic reports. However, it is anticipated that there will be a minimal number of annual licenses and periodic reports due to the limited size of the viatical industry.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 Ky. Acts ch. 403 requires the Commissioner of Insurance to promulgate administrative regulations necessary to provide for the licensing of viatical settlement providers and brokers. Since this administrative regulation is required by statute, no other alternative methods were 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: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement could result in unfair competition and financial loss to insured persons.

(c) If detrimental effect would result, explain detrimental effect: Nonregulation would permit non-disclosure of rights and alternatives to the insured public, and unfair competition within the industry.

(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 is not applied since this administrative regulation applies to all individuals and entities engaged in the solicitation and sale of viatical settlement agreements.

STATEMENT OF EMERGENCY
806 KAR 17:170E

This emergency administrative regulation defines "genetic test," "genetic information," and "genetic services." 1998 Ky. Acts ch. 496 (HB 315) was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward implementing its provisions. Various provisions of HB 315 refer to genetic test, genetic information, and genetic services. Because HB 315 did not specifically define these terms, it is necessary for the Commissioner of Insurance to promulgate an emergency administrative regulation to define genetic test, genetic information, and genetic services. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 17:170E. Genetic testing.

RELATES TO: 1998 Ky. Acts ch. 496 secs. 2(1)(f), 4(3)(a)2, 5(3), 55(2), (3), (4)

STATUTORY AUTHORITY: KRS 304.2-110

EFFECTIVE: August 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 permits the Commissioner of Insurance to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. In order to enforce the provisions of 1998 Ky. Acts ch. 496, it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation establishes the definitions for those terms.

Section 1. Definitions. (1) "Genetic information" means information derived from a genetic test.

(2) "Genetic services" mean medical services employed to gather genetic information.

(3) "Genetic test" means a laboratory test of human DNA or RNA used to identify the presence or absence of inherited alterations in the DNA or RNA which cause predisposition to disease or illness. A genetic test does not include a:

(a) Laboratory test for the analysis of blood or body fluids that may be performed in the course of a routine physical examination provided no attempt is made to extract genetic information; or

(b) Test as established in paragraph (a) of this subsection that is newly approved for use in clinical practice by the federal Food and Drug Administration.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel
CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky, Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of 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 department

has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative regulation does not contain any reporting or paperwork requirements. This administrative regulation is informative in that it defines and clarifies terms used by 1998 Ky. Acts ch. 496.

2. Second and subsequent years: This administrative regulation does not contain any reporting or 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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

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

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since the enactment of 1998 Ky. Acts ch. 496, the Department of Insurance has received numerous inquiries regarding the department's interpretation of genetic test, genetic information, and genetic services. The department considered issuing an informal opinion to clarify the department's position with respect to these terms. This alternative was rejected due to the department's inability to enforce an advisory opinion. Therefore, the department chose to promulgate an 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: 1998 Ky. Acts ch. 496 provides specific instruction to insurers regarding their treatment of genetic information, genetic tests, and genetic services. By defining these terms, an insurer may better determine whether a preexisting condition is present; whether the insurer may deny, cancel, or refuse to renew benefits or coverage on the basis of a test or service; or whether disclosure of a test is permitted.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, persons who have had a genetic test or who have requested or received genetic services may be wrongfully denied or refused health insurance coverage. In addition, certain genetic information might be treated as a preexisting condition absent 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 is not applied since this administrative regulation applies to all insurers and health maintenance organizations issuing health benefit plans in Kentucky.

ADMINISTRATIVE REGULATIONS AS AMENDED BY REVIEWING SUBCOMMITTEE
AND PROMULGATING AGENCY

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
Division of Driver Licensing
Department of Administrative Services
(As Amended at ARRS, August 4, 1998)

601 KAR 2:020. Drivers' privacy protection.

RELATES TO: KRS 61.870 through 61.884, 187.310, 18 USC Chapter 123

STATUTORY AUTHORITY: KRS 61.874

NECESSITY, FUNCTION, AND CONFORMITY: ~~The 1994 National Crime Prevention Act included a section called "The Drivers' Privacy Protection Act" codified as~~ 18 USC Chapter 123 [which] mandates the information which can and cannot be included in information sold or otherwise distributed about motor vehicle operators or owners. This administrative regulation establishes the [is the means used by the Department of Vehicle Regulation to establish under what] circumstances and conditions governing the distribution or sale of personal information. ~~[the personal information will be distributed or sold.]~~

Section 1. **Definition.** ~~[Definitions:]~~ "Personal information" means information that identifies an individual including the following:

- (1) Name;
- (2) Address, excluding the zip code;
- (3) Social Security Number;
- (4) Date of birth;
- (5) Driver identification number;
- (6) Telephone number;
- (7) Photograph; and
- (8) Medical or disability information.

Section 2. (1) In the Driver Licensing Computer Information System, the following shall not be considered personal information:

- (a) Driver status; and
- (b) Violation or conviction of a traffic law.

(2) The information included in the Driver Licensing Computer System shall not be distributed or sold contrary to KRS 187.310.

Section 3. Personal information in the Driver Licensing Computer Information System or the Automated Vehicle Information System, including personal information relating to the owner of a boat, shall [may] be released for the following reasons:

- (1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;
- (2) For use in connection with matters relating to the following:
 - (a) Motor vehicle or driver safety;
 - (b) Motor vehicle theft;
 - (c) Motor vehicle emissions;
 - (d) Motor vehicle product alterations, recalls, or advisories;
 - (e) Performance monitoring of motor vehicles, motor vehicle parts, or dealers;
 - (f) Motor vehicle market research activities, including survey research; and
 - (g) Removal of nonowner records from the original owner records of motor vehicle manufacturers;
- (3) For use in the normal course of business by a legitimate business or its agent, employee, or contractor, but only:
 - (a) To verify the accuracy of personal information submitted by the individual to the business or its agent, employee, or contractor; or
 - (b) If the submitted information is not correct or is no longer correct, to obtain the correct information, in order to prevent [but only for the purpose of preventing] fraud by pursuing legal remedies against or

recovering on a debt or security interest against, the individual;

(4) For use in connection with a civil, criminal, administrative, or arbitral proceeding in a [any] federal, state, or local court or agency or before a [any] self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(5) If the personal information is not published, redisclosed, or used to contact an individual, for use in:

- (a) Research activities; or
- (b) Producing statistical reports;

(6) For use by an [any] insurer or insurance support organization, or by a self-insured entity, or its agent, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(7) For use in providing notice to the owner of a towed or impounded vehicle;

(8) For use by a [any] licensed investigative agency or licensed security service for a purpose permitted under this section [subsection];

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC App.2710 et seq.);

(10) For use in connection with operation of a private toll transportation facility; or

(11) For use by a [any] requester, if the requester demonstrates he has obtained the written consent of the individual to whom the information pertains.

Section 4. A person wishing pursuant to Section 3 of this administrative regulation to obtain a record which includes personal information, shall complete one (1) of the following or its preapproved electronic equivalent:

(1) If the record is in the Driver Licensing Computer Information System:

(a) Transportation Cabinet form TC 94-1, "Request for Driver Licensing Record(s) which Includes [include] Personal Information"; ~~[or]~~

(b) Transportation Cabinet form TC 94-2, "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information";

(c) Transportation Cabinet form TC 94-40, "Multiple Requests for Driver Licensing Records Which Include Personal Information; or

(d) Transportation Cabinet form TC 10-301, "Agreement Relating to Driver Licensing Records"; or

(2) If the record is in the Automated Vehicle Information System:

(a) Transportation Cabinet form TC 96-16, "Request for Motor Vehicle or Boat Record which Includes Personal Information"; or

(b) Transportation Cabinet form TC 96-325, "Multiple Requests for Motor Vehicle or Boat Records Which Include Personal Information.

Section 5. (1) In addition to Section 3 of this administrative regulation, the selling of information from the Automated Vehicle Information System relating to a motor vehicle registered or titled in the Commonwealth of Kentucky shall be allowed if the information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations.

(2) The surveys, marketing, or solicitations shall not be directed at an individual who has requested that they not be directed at him pursuant to Section 6 of this administrative regulation.

(3) A person requesting information pursuant to this section shall sign an agreement with the Transportation Cabinet in order to apply for this information. This request shall be on Transportation Cabinet Form TC 10-300, "Agreement Relating to Motor Vehicle or Boat Records" which relates to use of information requested from the Automated Vehicle Information System.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Section 6. (1) A person who does not wish to have surveys, marketing, or solicitations directed at himself from information obtained from the Automated Vehicle Information System shall complete and file a copy of Transportation Cabinet Form TC 96-320 "Request to Withhold Personal Information" with the Division of Motor Vehicle Licensing.

(2) The motor vehicle licensing office of each county clerk shall prominently display a sign explaining that an individual is allowed to complete this form in order that his personal information not be included in a commercial bulk sale.

(3) If a person renews his motor vehicle registration by mail pursuant to KRS 186.020(5), the county clerk shall include in the package which contains the renewed registration form for each individual a copy of Transportation Cabinet form TC 96-320.

Section 7. Retention of Records. A form completed pursuant to Section 4 or 5 of this administrative regulation shall be retained by the agency or office providing the record containing personal information for a minimum of two (2) years [six (6) months].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference [as a part of this administrative regulation]:

(a) Transportation Cabinet form TC 94-1 "Request for Driver Licensing Record(s) [Records] which Includes [Include] Personal Information" effective July 1998 [August 1997];

(b) Transportation Cabinet form TC 94-2 "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information" effective July [May] 1998;

(c) Transportation Cabinet form TC 96-16 "Request for Motor Vehicle or Boat Record which Includes Personal Information" effective July 1998 [October 1997];

(d) Transportation Cabinet form TC 96-320, "Request to Withhold Personal Information" effective February 1998 [October 1997]; and]

(e) Transportation Cabinet form TC 10-300, "Agreement Relating to Motor Vehicle or Boat Records" effective July 1998;

(f) Transportation Cabinet form TC 94-40, "Multiple Requests for Driver Licensing Records Which Include [Contain] Personal Information" effective July 1998;

(g) Transportation Cabinet form TC 94-40, "Multiple Requests for Motor Vehicle or Boat Records Which Include [Contain] Personal Information" effective July 1998; and [or]

(h) Transportation Cabinet form TC 10-301, "Agreement Relating to Driver Licensing Records" effective July 1998 [September 1997].

(2) This material [The material incorporated by reference in this administrative regulation] may be viewed, copied, or obtained from the following offices within the Transportation Cabinet, Monday through Friday, 8 a.m. to 4:30 p.m.: [The office hours of each office are 8 a.m. to 4:30 p.m., local prevailing time on weekdays.]

(a) TC 96-320, TC 96-325, and TC 96-16 from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 501 High Street, Frankfort, Kentucky 40622; [-, telephone number is (502) 564-5301.];

(b) TC 94- 1, [and] TC 94-2, and TC 94-40 from the Department of Vehicle Regulation, Division of Driver Licensing, 501 High Street, Frankfort, Kentucky 40622; and [-, telephone number is (502) 564-6800.];

(c) TC 10-300 and TC 10-301 from the Department of Administrative Services, 501 High Street, Frankfort, Kentucky 40622[-, telephone number is (502) 564-3670].

ED ROBERTS, Commissioner

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: July 8, 1998

FILED WITH LRC: July 10, 1998 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(As Amended at ARRS, August 4, 1998)

781 KAR 1:061. Repeal of 781 KAR 1:060.

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the state vocational rehabilitation program. This administrative regulation established criteria for the provision of services by community facilities. 781 KAR 1:060 is no longer necessary because many of the community rehabilitation programs governed by the administrative regulation no longer exist. The department now purchases services as needed from private not-for-profit community rehabilitation programs.

Section 1. 781 KAR 1:060, Admission and discharge from community facilities, is hereby repealed.

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: May 14, 1998

FILED WITH LRC: May 14, 1998 at 4 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:040. Definition of terms in 902 KAR Chapter 8, [applicable for the personnel program for local health departments.]

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 [211.090; 212.170; 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 8. [KRS 211.170 and 211.1755 [-, 212.170, and 212.870] requires the cabinet to supervise the personnel functions of local health departments and [- House Bill 631 provides that the cabinet shall] establish policies and procedures for the local health department personnel program through the promulgation of administrative regulations. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 211 [212].]

Section 1. Definitions. [As used in administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140:] (1) "Agency" is defined by KRS 211.1751(1). [1994 Ky. Acts ch. 336, Sec. 1.]

(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(3) "Appeal" means the right, under the provisions of 902 KAR 8:110, to appear before the Local Health Department Employment Personnel Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:060 [8:050] through 902 KAR 8:140.

(4) "Appointing authority" means the board of health or other lawfully delegated individual authorized under KRS Chapter 212 to make appointments.

(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(6) "Cabinet" means the Cabinet for Health Services. [Human Resources];

(7) "Certification of eligibles" means a list of eligibles issued by the Department for Public Health [Services] to the appointing authority of an agency certifying that the individuals meet the established minimum qualifications of the position, passed the required examination, and may be considered for employment.

(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience, or skill; and other characteristics.

(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:060 [8:050] through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR 8:080; or

(c) An employee appointed as a janitor after the effective date of this administrative regulation; or

(d) An employee appointed under the provisions of 902 KAR 8:080 to work an irregular schedule as needed by an agency and whose hours of actual work do not exceed 400 hours per year.

(10) "Classification plan" is defined by KRS 211.1751(2). [1994 Acts ch. 336, Sec. 1-]

(11) "Compensation plan" is defined by KRS 211.1751(3). [1994 Acts ch. 336, Sec. 1-]

(12) "Compensatory time" means the accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 USC 206.

(13) ["Competitive examination" means a formal process of measuring the qualifications of applicants for employment or promotion.]

(14) "Council" is defined by KRS 211.1751(4). [1994 Acts ch. 336, Sec. 1-]

(14) [(15)] "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(15) [(16)] "Department" is defined by KRS 211.1751(5). [1994 Acts ch. 336, Sec. 1-]

(16) [(17)] "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties which are temporary.

(17) [(18)] "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(18) [(19)] "Discrimination" means any administrative decision based in whole or in part on a person's race, sex, age, religion, national origin or disability, except where the decision is supported by a valid occupational qualification.

(19) [(20)] "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(20) [(21)] "Eligible" means an individual whose name appears on a register for a particular class.

(21) [(22)] "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.

(22) [(23)] "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(23) [(24)] "Excessive absenteeism" means absences from the employee's work station that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, excessive unexcused absence [excess use of sick leave] that causes repetitive disruption of job performance and responsibilities of the employees and the agency, abuse in the use of annual leave, violating agency break policy, or violation of agency lunch policy.

(24) [(25)] "Flagrant violation" means:

(a) A breach of:

1. State law;

2. An agency rule;

3. An agency policy;

(b) Failure of an employee to follow a directive which constitutes a clear, present, or foreseeable threat or danger to the life, safety, health, or welfare of:

1. A patient;

2. Another employee;

3. The general public; or

4. The subject employee; or

(c) Activity or behavior by an employee that seriously disrupts the normal course of business in the agency. [a breach of state law, agency rules, policies, or directives by an employee, which, under the circumstances, constitutes a clear, present or immediately foreseeable threat or danger to the life, safety, health, or welfare of patients, other employees, the subject employee, or general public; or the employee's activities and behavior [otherwise] seriously disrupts the agency's normal course of business.]

(25) [(26)] "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

[(27)] "Immediate family" means the spouse, parent, child, brother, or sister, the spouse of either of them, grandparent, grandchildren, mother- or father-in-law, or daughter- or son-in-law.]

(26) "Insubordination" means the [willful] refusal or the ignoring of a request [requests] to perform a task or to comply with an order given to the employee by a supervisor under circumstances where:

(a) The employee understands the order or request; and

(b) Refusal to perform is not justified by a reasonable safety concern. [employee's behavior is not justified by reasonable concern over safety.]

(27) [(28)] "Job description" means a written description for each classification setting forth the:

(a) Title of the class;

(b) Duties and responsibilities of the work;

(c) Minimum requirements for the job;

(d) Special requirements for the job, including physical standards necessary to perform the work. [the characteristics of the work, the minimum requirements, and the special requirements, including any physical standards deemed necessary to satisfactorily do the work.]

(28) [(29)] "Local health department" means an agency as defined above subject to the provisions of administrative regulations 902 KAR 8:040 [8:050] through 902 KAR 8:140.

(29) [(30)] "Minimum qualifications" means a comprehensive statement setting forth the minimum background required as to education and experience.

(30) [(31)] "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

[(32)] "Nonstatus employee" means a provisional, emergency, temporary, or seasonal employee, or an employee who has not completed the initial probationary period.]

(31) [(33)] "Initial probationary period" means the period an employee is required to serve prior to becoming a regular [permanent] employee in an agency.

(32) [(34)] "Outstanding merit payment" means a lump sum payment made to an employee based on an employee's outstanding job performance.

(33) [(35)] "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked do not average 100 hours of work per month.

(34) [(36)] "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month.

(35) "Pay status" means a period of time for which an employee receives pay for:

(a) Time worked;

(b) A state holiday; or

(c) Approved accumulated leave of absence, including:

1. Sick leave;

2. Extended sick leave;

3. Vacation, using annual or compensatory leave;

4. Military leave; or

5. Another type of paid leave provided by 902 KAR 8:120. [any period of time for which an employee receives pay for time worked or utilizes approved accumulated leave for an absence. Paid time leave]

~~includes sick leave, extended sick leave, vacations using annual leave or compensatory leave, holidays, military leave, or other types of paid leave provided by administrative regulation 902 KAR 8:120.]~~

(36) [(37)] "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(37) [(38)] "Probationary employee" means an employee serving the required initial probationary period following appointment.

(38) [(39)] "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(39) [(40)] "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(40) [(41)] "Register" means an officially promulgated list of eligibles for a job classification in the order of their final ratings on a merit examination.

(41) "Regular status employee" means an employee who has successfully completed a required initial probationary period upon appointment and any extension thereof and is subject to the provisions of 902 KAR Chapter 8 [administrative regulations 902 KAR 8:040 through 902 KAR 8:140].

(42) "Salary range" means the rate and range of pay established for a class of positions.

[(43)] "Seasonal position" means a position established for a specific seasonal purpose and for a specific period of time not to exceed nineteen (19) pay periods.

(44) "Status employee" means an employee who has satisfactorily completed the required initial probationary period and is afforded the rights and privileges provided by administrative regulation 902 KAR 8:050 through 902 KAR 8:140.

(45) "Temporary appointment" means an appointment for a period not to exceed thirteen (13) pay periods from a register of eligibles for a period not to exceed a six (6) month period.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: **KRS**

211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes the classification and compensation plans for local health departments. [KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for the local health departments. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan describes the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary for the satisfactory performance of the duties of the various jobs performed by local health department employees. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the classification specifications and provides requirements which must be met for salary adjustments for employees.]

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall set forth for each class of positions:

(a) A title;

(b) A description of the duties and responsibilities;

(c) The minimum requirements of training and experience; and

(d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate a newly established position to a class [positions to classes] upon receipt of a statement of duties, responsibilities, and requirements of the position [positions] from the appointing authority.

(7) The department shall:

(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) An agency shall change the classification of an existing position through a reclassification if a material and permanent change in the duties and responsibilities of a position occurs and the change in the duties and responsibilities are characteristic of a different classification.

(a) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(10) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

(a) Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;

(b) Financial condition of the agency [conditions of the agencies];

(c) Experience in recruiting for a position [positions];

(d) Prevailing rates of pay for services of similar kind and quality;

(e) Benefits received by employees; and

(f) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation and under what circumstances salary adjustments may exceed the maximum.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health department

ments. An amendment shall include:

(a) A change in the minimum, midpoint, and maximum salary level for a respective classification of the classification plan; and

(b) The manner in which a salary adjustment, as appropriate, shall be granted. [Amendments shall include changes in minimum, midpoint, and maximum salary levels for respective classifications of the classification plan and the manner in which salary adjustments, as appropriate, shall be granted.]

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. An appointment [Appointments] to the position may be made within the new salary range applicable to the class. If an appointment is [appointments are] made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for new employee entering a [employees entering] professional, technical, or clerical position [positions] if the individual possesses qualifications in training and experience that exceed [above] the minimum required for the class as follows:

(a) Two (2) percent salary adjustment, not to exceed the midpoint, for each year of experience and appropriate education or training in excess of the minimum requirements for the respective classification; or

(b) Other qualifications established by the department with the advice of the council and local health departments.

(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted, of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(8) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

(a) Additional qualifications acquired by the employee;

(b) Established minimum entrance salary above the former salary;

or

(c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, at the beginning of each fiscal year, annually establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given to each full-time and designated part-time 100 hour employee at the beginning of the first [full] pay period following twenty-six (26) [full] pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 since the established anniversary date. An employee designated as part time shall receive the salary adjustment after twenty-six (26) pay periods of service.

(b) An outstanding meritorious lump sum payment shall not be approved if an agency does not grant an annual increment. [If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved.]

(3) An appointing authority may deny an annual increment to an employee for the following reasons;

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.

(5) An employee's established anniversary date shall be the first day of the first [full] pay period upon completion of twenty-six (26) pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 after initial employment. A designated part-time employee's established anniversary date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(6) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

(a) Five (5) percent; or

(b) The minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) Annual increment dates shall not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave; or

(g) Is reclassified; or

(h) Is promoted.

(9) The appointing authority, with the approval of the department may award any regular [permanent], full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) week pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position, either through a compensation plan change or the establishment of a new minimum entry salary for a classification, persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum entry salary of the new range.

~~[(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.~~

~~(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.]~~

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he

not been on special assignment.

(13) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) The department may approve other salary adjustments with the advice of the Local Health Department Employment Personnel Council and local health departments. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(15) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(16) An agency may grant a one (1) time salary adjustment for all [each] employees during the fiscal year. The salary adjustment shall not exceed five (5) percent.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for local health departments. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) [For those job classifications in which there is expected to be a considerable and recurring need of eligibles:] The department, with the advice of the council and the local health departments, shall establish a [recruitment] program which shall provide for the recruitment needs of the various agencies. [be both positive and continuous. Under the recruitment plan, applications may be accepted at any time and examinations held whenever and wherever the department deems necessary.]

(2) The recruitment plan shall specify the following:

(a) The conditions under which applications for potential employment will be received;

(b) The assessment method [or methods] [examination method] utilized to select the individual that:

1. Meets the minimum requirements of education and experience; and

2. Possesses the knowledge, skill, and ability [skills and abilities] to perform the job [duties and] responsibilities [of the position];

(c) The requirements for announcing a vacant position which shall include the following:

1. The title and minimum salary of the class of position;

2. Information as to the rates of pay at which appointments are expected to be made;

3. The types of duties to be performed;

4. The minimum qualifications of education, training, and experience required;

5. The date, if required, on which applications are to be received

in the agency;

6. Veteran's preference;

7. The date, time and place of a written and scored [an] examination for the position if required; and

8. All other conditions of competition, including the fact that failure in one (1) part of the selection method [examination] shall disqualify an applicant; and

9. If an agency requires preemployment drug testing, criminal records checking, physical examination or other special conditions upon an offer of employment. [For those job classifications for which continuous recruitment is not needed, special announcements shall be used.]

(3) An agency shall announce publicly the recruitment effort to fill a position. Based on the type of position to be filled, the notice of the recruitment effort shall be [examinations shall be announced publicly and may be] distributed to one (1) or more of the following:

(a) Public officials;

(b) Employment service offices;

(c) Newspapers;

(d) Educational institutions;

(e) Professional and vocational societies; and

(f) Other media, [and other] individuals, and organizations, as necessary.

[(4) A public announcement of an examination shall specify:

(a) The title and minimum salary of the class of position;

(b) Information as to the rates of pay at which appointments are expected to be made;

(c) The types of duties to be performed;

(d) The minimum qualifications required;

(e) The date, if required, on which applications are to be received in the department;

(f) Veteran's preference;

(g) The date, time and place of an examination for the position if required;

(h) All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant; and

(i) Other special requirements of federal and state legislation such as the American with Disabilities Act 42 USC 12101 et seq. or Civil Rights Act 42 USC 2000(d).

(5) An application for employment, form CH-36, "Application for Employment", shall be required of each individual seeking potential employment with an agency. Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of State and Local Health Administration, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

(6) Except in continuous recruitment programs, an application for employment shall be mailed to the department on or before the closing date specified in the announcement as published by the agency or postmarked before midnight on that date.]

(4) [(7)] The department shall be the custodian of all applications.

(5) [(8)] An application for employment, form CH-36, shall be required of an individual seeking employment with an agency.

(6) The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed, if the applicant:

(a) [The applicant] Is found to lack specific requirements established for the examination for the class or position;

(b) [The applicant] Is unable to perform duties of the class;

(c) Except as provided for in subsection (6) of this section, [the applicant] has been convicted of a felony, a job related misdemeanor, or a misdemeanor for which a jail sentence may be imposed;

(d) [The applicant] Has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;

(e) [The applicant] Made a false statement of material fact in the application;

(f) [The applicant] Has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

(g) [The applicant] Has directly or indirectly obtained information regarding examinations to which the applicant was not entitled;

(h) [The applicant] Has failed to submit a complete application;

(i) ~~[An applicant]~~ Has failed to submit the application within the prescribed time limits as prescribed by the agency in the published announcement;

(j) ~~[The applicant]~~ Has taken part in the compilation, administration, or correction of the examination; or

(k) ~~[The applicant]~~ Has otherwise failed to meet the provisions of this administrative regulation.

(7) ~~[(6)]~~ Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determines that:

(a) The applicant is otherwise highly qualified and eligible for appointment; and

(b) The misdemeanor conviction will not adversely affect the applicant's job performance; and

(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and

(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.

(8) ~~[(7)]~~ ~~[(9)]~~ A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 2. Assessment Method~~[(s)]~~. ~~[Character of Examinations:]~~

(1) Assessment method ~~[Examinations]~~ shall be practical in nature, constructed to reveal the ~~capacity~~ ~~[capability]~~ of the applicant for the particular position as well as general background and related knowledge. An assessment method ~~[The various parts of the]~~ ~~[examination]~~ may be a written scored examination, oral scored examination, personal interview, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as applicants for a position are given the same assessment method. ~~[examination:]~~

(2) The recruitment plan required by this administrative regulation shall identify the assessment method ~~[examination process]~~ for each job classification.

(3) The department, in conjunction with an agency, may designate monitors as necessary to conduct written scored examinations requiring test scores, and may arrange for the use of public buildings in which to conduct the written examinations. The department shall provide for the compensation of monitors.

(4) ~~[(3)]~~ If an oral examination is a part of a total examination for a position, the department may appoint one (1) or more impartial oral examination boards as needed.

(5) ~~[(4)]~~ The department shall notify each applicant by mail of the final rating of the examination requiring test scores as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.

~~[(5)]~~ A vacancy in an agency may be filled by promotion of a qualified permanent employee.

(6) Promotions shall be based upon individual performance, with due consideration for length of service and capability of the individual to perform the duties and responsibilities of the new position. A candidate for promotion shall be certified by the department as meeting the qualifications for the position.]

Section 3. Establishment of Registers ~~[and Certification]~~ of Eligibles. (1) For continuous recruitment job classifications, as determined by the agency, the department shall establish and maintain registers as follows:

(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or

(b) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved. ~~[positions that require an examination the department shall maintain a register of eligible persons who made a passing score of seventy (70). The register shall remain active unless a new examination is administered or the department determines that the register is exhausted. An~~

individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved:]

(2) For a job classification that requires ~~[job classifications that require]~~ special announcement, as determined by the agency, the department shall establish and maintain registers as follows:

(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or

(b) If a job classification requires an applicant to meet the minimum qualifications and requires a scored examination an individual achieving a score of seventy (70) or above shall remain on the register for a period of one (1) year from the date on which the examination was given.

(3) The names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any, or in order of the date of receipt of application. If applications of eligibles have ratings which are identical are received on the same day, the names shall be placed on the certification in alphabetical order.

(4) ~~[(3)]~~ If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

~~[(4)]~~ The life of each register established as a result of a special announcement shall be one (1) year from the date of examination, if required, or the date upon which the department has completed the evaluation of applicants.]

(5) A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(6) The department may remove the name of an eligible from a register:

(a) For any of the causes stipulated for disqualifying an applicant provided for under Section 1 of this administrative regulation;

(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked no forwarding address;

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) An eligible receives a probationary appointment;

(f) Declines an offer of appointment for which the eligible previously indicated acceptance;

(g) The eligible fails to report for a scheduled interview without valid reason;

(h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.

(7) An eligible who is appointed on a probationary basis shall be removed from all applicable registers. The ~~[An]~~ eligible ~~[who is appointed on a probationary basis]~~ may request in writing to the department requesting that ~~[to have]~~ his name be reinstated to the applicable ~~[any]~~ register at any time before its expiration.

(8) The department shall notify the eligible by mail to his last known address of this action and the reasons therefore.

Section 4. Issuance of Certification of Eligibles. (1) ~~[(9)]~~ For positions requiring an examination requiring test scores and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons.

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.

(b) If there are fewer than the number of eligibles specified in this section, the available number shall be certified and appointment will be made if there are as many as three (3) available eligibles for each

vacancy.

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).

(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.

(2) [(+10)] For a position which does [positions which do] not require an examination the department shall certify all names of eligibles to the appointing authority.

(3) [(+11)] The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(4) [(+12)] The life of a certification of eligibles during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligibles.

(5) A regular [(+13)] An employee [with status], placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which laid off.

(a) A regular [status] employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) An examination shall not [No examination shall] be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off regular employee [with status] desires reemployment in a different job classification, the employee shall meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

(d) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 5. Incorporation by Reference. (1) "Form CH-36 Application for Employment", (1/98 Edition), Cabinet for Health Services, is incorporated by reference. [Application for Employment, (1) An application for employment, form CH-36, "Application for Employment", revised January 1998, shall be required of each individual seeking potential employment with an agency.]

(2) It may be inspected, copied, or obtained [Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied] at the Department for Public Health, Division of Local Health Department Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [during the office hours of 8 a.m. and 4:30 p.m.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

-NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 [211.090; 212.170; 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories permissible appointments, employment probationary periods, the employee evaluation process. [KRS 211.170 and 211.1755 [211.090, 212.170; and 212.870] requires the cabinet to supervise the personnel functions of local health departments and [House Bill 631 provides that the

cabinet shall establish policies and procedures for the local health department personnel program through the promulgation of administrative regulations. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay-off is also addressed.]

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. [The appointing authority or other designated supervisory staff shall interview and examine applicants certified and shall report the final selection to the department.]

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not [No provisional appointment shall] be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular [permanent] employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period if the employee has had a break in service of not more than twelve (12) months. If the employee has had a break in service of more than twelve (12) months, the employee shall serve a probationary period. [The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.]

(3) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

(4) Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint, with the approval of the department, a person with the approval of the department [or persons at the minimum entrance salary for the class]. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

- (a) Increased work activity of a seasonal nature;
- (b) Work study or job training programs;
- (c) Special projects; or
- (d) Summer employment.

(2) An applicant shall not be appointed to a seasonal position unless the established minimum requirements have been met. [Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.]

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Appointment of an Individual to a Variable [an Itinerant] Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having variable [itinerant] hours of work.

(2) An agency may appoint an individual who meets the minimum requirements of education and experience established for the position to a variable hour [an itinerant hours] position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate as determined by the agency.

(4) The hours of work of the individual shall not exceed 400 hours per year.

(5) An individual appointed to the variable [itinerant] hour position shall not be considered in the classified service and continued employment shall be subject to the discretion of the appointing authority.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with applicable administrative regulations.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 8. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each:

- (a) Permanent employee on an annual basis; and
- (b) [for each] Probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining:

- (a) An annual and probationary salary advancement;
- (b) [advancements and in] Requesting and approving a:
 - 1. Promotion;
 - 2. Demotion; or
 - 3. Dismissal; [promotions, demotions, dismissals;] and

(c) [in-determining] The order of separation [separations] due to a reduction of work force.

[(4) Performance appraisals shall be prepared and recorded on Form CH-40, "Employee Performance Appraisal", revised April 1993. Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]

Section 9. [8:] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall normally be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed, [as to one (1) of the following actions:

(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed;

(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing; or

(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period;]

(4) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise. [The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification;]

(5) The initial probationary period may be extended for the following:

(a) Because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period;

(b) The employee has been unable to complete a required job related training course[es]. [If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise;]

(6) The employee serving a probationary period may be eligible for promotion to a position in a higher class, if [provided] the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date the employee was promoted. [of the most recent appointment;]

(7) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

Section 10. [9:] Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may be reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee shall have [has] the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 11. [10:] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) A resignation [Resignations] shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) [~~Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.~~]

(4) An employee's lump sum payment for accumulated annual leave and compensatory time may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles or other agency property in the possession of the employee.

Section 12. [11:] Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval. The plan shall contain the name of the employee and the reasons, in detail, for the layoff. Upon approval of the plan by the department, the employee shall be notified that he is subject to layoff, and of:

(a) The reason for the layoff;

(b) The procedures established for the layoff of employees; and

(c) The rights granted employees subject to layoff. [The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee proposed to be laid off. The agency shall consider at least the following factors:

(a) Seniority of employees;

(b) Results of employee performance evaluation;

(c) Qualification of employees; and

(d) Type of appointment or source of funding.]

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall

be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c) If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register; and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. For purposes of layoff, "probationary employee" shall [does] not include an employee serving a promotional probation.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class qualified.

(8) For a period of one (1) year, a laid-off employee [employees] shall be given priority consideration by the agency before any applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be removed from any register unless the employee:

(a) Notifies the department in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Is unable to perform the duties of the class;

(e) Has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or

(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 13. Incorporation by Reference. (1) "Form CH-40, Employee Performance Appraisal", (4/93 Edition), Cabinet for Health Services, is incorporated by reference.

(2) It may be inspected, copied or obtained at the Department for Public Health, Division of Local Health Department Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Performance Appraisal Form: (1) Performance appraisals shall be prepared and recorded on Form CH-40, "Employee Performance Appraisal", revised April 1993;

(2) Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Public Health, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m. [The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal, or probationary employees serving in the agency in the same class.]]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.1751, 211.1755; EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 [211.170 and 211.1755] requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall [and] establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. [Executive Order 96-862, signed July 2, 1996, reorganizes the Cabinet for Human Resources by establishing the Cabinet for Health Services and the Department for Public Health within the cabinet.]

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) A promotion [Promotions] shall be based upon individual performance, with due consideration for length of service and capability of the individual to perform the duties and responsibilities of each new position.

(3) The employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(4) [(3)] An employee who is promoted shall have the employee's salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class;

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(5) [(4)] An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(6) [(5)] A regular [permanent] employee promoted from a classified position to an unclassified position retains the employee's status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a regular [permanent] employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

(2) A transfer of a regular [permanent] employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

(4) An employee appointed to a position in an agency having prior work experience in a health department established under KRS

212.350, 212.640, or 212.782 may use the length of employment in determining the rate of earning annual leave provided for under 902 KAR 8:120.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification having a one (1) or two (2) grades lower.

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employee's current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the original appointment had been to the position of the lower class.

(7) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have the employee salary reduced to the level prior to promotion.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998
FILED WITH LRC: February 25, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.1751, 211.1755 [212.170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department. [KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, predisciplinary action procedures, and an appeal process.]

Section 1. Disciplinary Action. (1) An appointing authority may

discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) ~~A classified employee with status shall not be disciplined except for cause:~~

(3) A situation [Situations] that may warrant disciplinary action shall include [are situations such as]:

(a) Inefficiency or incompetency in the performance of duties;
(b) Negligence in the performance of duties;
(c) Careless, negligent, or improper use of local health department property or equipment;

(d) Excessive absenteeism; [Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;

~~(e) Habitual improper use of sick leave and other leave privileges;~~

(e) ~~[(f)] Habitual pattern of failure to report for duty at the assigned time and place;~~

(f) ~~[(g)] Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;~~

~~[(h)] Gross misconduct or conduct unbecoming an employee;~~

(g) ~~[(h)] Willful abuse or misappropriation of funds, property, or equipment;~~

~~[(i)] Conviction of a felony;~~

(h) ~~[(i)] Willful abuse or misappropriation of funds, property, or equipment;~~

~~[(j)] Conviction of a felony;~~

(k) ~~Falsification of an official document relating to or affecting employment;~~

(l) Disrupting, disturbing, or interfering with management of agency operation; [(l)] Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;

~~[(l)] Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;~~

~~[(m)] [(j)] [(m)] Damage or destruction of agency property;~~

~~[(n)] Abuse towards patients, coworkers, or the public in the performance of duties;~~

(i) [(n)] Abusive behavior towards a patient, coworker, [patients, coworkers,] or the public in the performance of duties;

(k) Insubordination;

~~[(e)] [(k)] [(o)] Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);~~

~~[(p)] Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;~~

(l) [(p)] Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;

(m) [(q)] [(h)] [(q)] Sleeping or failure to remain alert during working hours;

~~(n) [(r)] [(m)] [(r)] Violation of confidential information policies of the agency;~~

~~[(o)] [(s)] [(n)] [(s)] Prohibited political activity; [and]~~

~~[(p)] [(t)] [(e)] [(t)] Unauthorized absence or absence for any period of working without notifying supervisor; and~~

(g) [(u)] [(p)] Breach of state law, an agency rule, policy, or directive, [agency rules, policies, or directives; and]

~~[(v)] [(q)] Failure to report illegal activities of coworkers or supervisors;~~

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not [only] [not] be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner with each disciplinary action more severe in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall [normally] consist of the following actions:

(a) Verbal admonishment;

(b) Written admonishment or warning;

(c) Demotion or suspension; and

(d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action Hearing. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; or

2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; [and]

(b) [3.] The date, time, and place of the action or activity; [and]

(c) [4.] The name of the parties involved; and

(d) [(b)] That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request to appear to reply to the appointing authority shall be made within six (6) working days of receipt of the notice of intent to demote, suspend, or dismiss. [No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.]

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) [(a)] If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified of the following, in writing:

(a) The effective date of the demotion, suspension, or dismissal;

(b) The reason for the demotion, suspension, or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; or

2. Specific action or activity on which the demotion, suspension, or dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of the parties or witnesses involved;

(e) Of his right to appeal the demotion, suspension, or dismissal;

(f) That an appeal shall be:

1. Prepared on a "Form CH-41 Request for Appeal"; and

2. Filed with the Local Health Department Employment Personnel Council within fifteen (15) days of the effective date of the decision of the appointing authority. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked. [If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing (fourteen (14) days prior to the action) of:

(a) [1.] The effective date of the demotion, suspension, or dismissal; and

(b) [2.] The statutory, regulatory, or agency policy violation; or

(c) [3.] The specific action or activity on which the demotion, suspension, or dismissal is based; and

(d) [4.] The date, time, and place of the action or activity;

(e) [5.] The name of the parties involved;

(f) [6.] That the employee may appeal the demotion, suspension, or dismissal to the Local Health Department Employment Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.]

(6) [(b)] The appointing authority shall provide the employee with the appeal request form.

[(6)] All appeals shall be submitted on Form CH-41, "Request for Appeal", dated April 1, 1993. Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

(7) Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.]

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or [Immediate] Dismissal of an Employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of [immediately dismiss] an employee for a serious misconduct infraction [infractions].

(2) An example of a misconduct infraction [Examples of misconduct infractions] that may be considered serious enough to merit immediate suspension or dismissal include the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

(b) Stealing or deliberately damaging the property of:

1. The agency;

2. A client;

3. A patient; or

4. Another employee. [agency's, client's, patient's, or another employee's property];

(c) Carrying a concealed, deadly [Possessing a] weapon at work;

(d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician; or

(e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) If an employee wishes to reply to a notice he shall:

(a) Request to appear personally before the appointing authority. The request shall be:

1. In writing; and

2. Made within five (5) days of receipt of the notice; and

(b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority. [No later than five (5) working days after receipt of the notice of intent to suspend or dismiss, excluding the day the employee receives the notice, the employee may request to appear personally, or with counsel if the employee has retained counsel to reply to the appointing authority.]

(6) [(5)] The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within [(6) No later than] five (5) working days after the employee appears to reply to the intent to dismiss, the appointing authority shall determine whether to modify, or rescind the intent to dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to dismiss immediately, the employee shall be notified of the following, in writing:

(a) The effective date of the dismissal;

(b) The reason for the dismissal, including the:

1. Statutory, regulatory, or agency policy violation; or

2. Specific action or activity on which the dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of the parties or witnesses involved;

(e) Of his right to appeal the dismissal;

(f) That an appeal shall be:

1. Prepared on a "Form CH-41 Request for Appeal"; and

2. Filed with the Local Health Department Employment Personnel Council within fifteen (15) days of the effective date of the dismissal. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

[(7) If the appointing authority determines that the employee shall

be dismissed immediately, the employee shall be notified in writing of:

(a) The effective date of the dismissal; and

(b) The statutory, regulatory, or agency policy violation; or

(c) The specific action or activity on which the dismissal is based;

and

(d) The date, time, and place of the action or activity;

(e) The name of the parties involved;

(f) That the employee may appeal the dismissal to the Local Health Department Employment Personnel Council no later than fifteen (15) days after the effective date of the dismissal;

(g) The appointing authority shall provide the employee with the appeal request form.]

Section 5. Directive to Vacate Premises. (1) [(8)] If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pretermination hearing shall be provided within three (3) working days [as soon as practicable] after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 6. [5.] Incorporation by Reference. (1) "Form CH-41 Request for Appeal", (1/98) Edition, Cabinet for Health Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department for Public Health, Division of Local Health Department Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Appeal Form: (1) All appeals shall be submitted on Form CH-41, "Request for Appeal", dated January, 1998.

(2) Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.1752, 211.1755
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755 and 211.1752 requires the cabinet to supervise the personnel functions of local health departments and establish policies and procedures for the local health department personnel program. KRS 211.1752 provides for an appeal process for employees who are disciplined, applicants or employees who allege discrimination in personnel actions, and eligibles who question their rating in the examination process. This administrative regulation provides for the specific appeal process.

Section 1. Appeals. (1) An employee with status who is demoted according to 902 KAR 8:090, Section 3(1)(c), suspended, or dismissed shall have the right to appeal the action. The appeal shall be:

(a) In writing, on a "Form CH-41 Request for Appeal"; and
(b) Filed with or mailed to the department by certified mail, return receipt requested within fifteen (15) days of the demotion, suspension, or dismissal. [and mailed to the department no later than fifteen (15) days after the effective date of the demotion, suspen-

sion, or dismissal.]

(2) An applicant who has taken an examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitably. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which notification of the results of the examination was mailed to the applicant.

(3) An eligible whose name has been removed from a register for any of the reasons specified in administrative regulation 902 KAR 8:070, Section 1(8) may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee may appeal within thirty (30) days of the alleged discrimination if he believes that he has been discriminated against in a personnel action because of:

- (a) Sex;
- (b) Religious opinion or affiliation;
- (c) Political opinion or affiliations;
- (d) Race;
- (e) National origin;
- (f) Disability; or
- (g) Age, [who has reason to believe that he has been discriminated against because of sex, religious, or political opinions or affiliations, race, national origin, disability, or age in any personnel action may appeal within thirty (30) days of the date of the alleged discrimination.]

(5) [A request for an appeal, provided for under this section, shall be submitted in writing using Form GH-41, "Request for Appeal" (July 1, 1994). Form GH-41, "Request for Appeal", dated July 1, 1994 may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]

(6) An appeal [All appeals] shall be conducted in accordance with procedures as set forth in Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule an administrative hearing upon an appeal to be held within sixty (60) days of receipt of the appeal. Notice of the hearing and conduct of the proceedings shall be in accordance with the requirements of KRS Chapter 13B.

(2) The hearing shall be conducted by the Local Health Department Employment Personnel Council or a designated hearing officer.

(3) Within the time allowed by KRS Chapter 13B, the Local Health Department Employment Personnel Council shall:

- (a) Make findings of fact and conclusions of law; and
- (b) Issue a final order, based on the record.

(4) If a hearing officer is designated to hear the appeal, the hearing officer shall:

- (a) Make findings of fact and conclusions of law; and
- (b) Recommend a final order to the Local Health Department Employment Personnel Council at its next meeting.

(5) The Local Health Department Employment Personnel Council may:

- (a) Adopt the report as submitted;
- (b) Amend the findings and recommendations based on the evidence contained in the report;
- (c) Remand the appeal to the hearing officer for further appropriate action; or
- (d) Rehear the appeal.

(6) The decision of the Local Health Department Employment Personnel Council shall be a final order, binding upon the employee and appointing authority. [The Local Health Department Employment Personnel Council shall, within the time allowed by KRS Chapter 13B, make findings of fact, conclusions of law, and based on the record issue a final order. If a hearing officer is designated to hear the appeal, the hearing officer shall make findings of fact, conclusions of law, and recommend a final order to the Local Health Department Employment Personnel Council at its next meeting. The Local Health Department Employment Personnel Council may adopt the report as submitted, amend the findings and recommendations based on evidence contained, or remand the appeal to the hearing officer for further action as appropriate or rehear the appeal. The decision of the

Local Health Department Employment Personnel Council shall be considered a final order and binding upon the employee and appointing authority.]

Section 3. Incorporation by Reference. (1) "Form CH-41 Request for Appeal", (1/98 Edition), Cabinet for Health Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department for Public Health, Division of Local Health Department Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Appeal Form: (1) A request for an appeal, provided for under this section, shall be submitted in writing using Form CH-41, "Request for Appeal" dated January 1998;

(2) Form CH-41, "Request for Appeal", dated January 1998 may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998

FILED WITH LRC: February 25, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes work hour, leave and compensatory time provisions for employees of local health departments. [KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.]

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours of work and days of work, of the agency or specific employees and may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) All hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be approved by the appointing authority and subject to compensatory time and over-time provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority may establish a position having special conditions of employment based on the needs of the agency with the approval of the department.

(5) The employee appointed, transferred, or who requests consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) Earning annual leave and sick leave at a rate based on the hours worked; [If annual leave and sick leave may be earned and at a rate based on the hours worked;]

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(b) Methods of payment of earned compensation that may be prorated; and

(c) Arrangements for handling nonwork time that may occur with the specific job responsibilities.

Section 2. Earning of Annual Leave. (1) Except for a seasonal, temporary, or emergency employee, a full-time employee shall earn annual leave credit at the following rate: [Each full-time employee except seasonal, temporary, and emergency employees shall be allowed to earn annual leave credit at the following rate:]

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 to 20 years	6.1 hours per pay period/158.6 hours per year
[& over]	
20 years & over	7.0 hours per pay period/182 hours per year

(2) Annual leave for a full-time employee [employees] shall not accrue unless he [only when an employee] has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a seasonal, temporary, or emergency employee, a part-time employee who is designated as serving on a part-time 100 hour basis and works at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate: [Each part-time employee except a seasonal, temporary, or emergency employee, designated as serving on a part-time 100 hour basis, who works at least twenty-three (23) hours each pay period, [an average of 100 hours a month] shall earn annual leave credit at the following rate:]

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 to 20 years	3.6 hours per pay period/93.6 hours per year
[& over]	
20 years & over	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months during which the employee was designated as a full-time, part-time 100 hour or was on educational leave with pay shall be used.

(5) Annual leave shall not accrue unless [only if] an employee is working or on authorized leave with pay. Annual leave shall not accrue if [when] an employee is on authorized education [educational] leave with pay.

(6) The maximum amount of annual leave earned by full-time employees that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(7) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	120 hours

5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(8) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon request and approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not [Employees shall] be charged with annual leave for absence except on a day [only on days] upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee [Employees] shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or changes from full-time or part-time 100 hour to part time.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, not to exceed the maximum amount allowable.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence [Absences] due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who works at least twenty-three (23) hours in a pay period [an average 100 hours or more per month] shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, parent, brother, sister, grandparent or grandchild, or mother- or father-in-law [member of his immediate family];

(d) If an employee would jeopardize the health of others at his

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

duty post because of exposure to a contagious disease;

(e) Has lost by death a spouse, parent, child, brother, sister, grandparent, grandchild, mother- or father-in-law, daughter- or son-in-law [member of the employee's immediate family]; or

(f) Is required to take [a member of] the employee's spouse, child, parent, brother, sister, mother- or father-in-law, grandparent or grandchild, [immediate family] for medical, psychiatric, dental, or optical examination or treatment.

(2) Sick leave granted for death in the employee's [immediate] family, as described in subsection (1) of this section, shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) ~~An employee shall file a written application for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay. [If possible, an employee shall request sick leave absence with or without pay prior to the intended use.]~~

(4) ~~Except for an unexpected absence from work because of an [if an employee is unexpectedly required to be absent from work in case of] illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or disciplinary action.~~

(5) ~~An [employee may be required by the] appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and [to present a statement in the form of personal affidavit, physician's statement, or other statement] certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave if [when] the application is supported by acceptable evidence.~~

(6) The following licensed practitioners shall be used in providing verification of an absence:

(a) Doctor of medicine;

(b) Doctor of osteopathy;

(c) Podiatrist;

(d) Dentist;

(e) Clinical psychologist;

(f) Optometrist;

(g) Chiropractor;

(h) Nurse practitioner;

(i) Nurse midwife; or

(j) Christian Science practitioner, certified by the Church of Christ, Scientist. ~~[Certified Christian Science monitor.]~~

(7) If an employee requests leave in excess of five (5) working days a statement from the employee's licensed practitioner [physician] shall accompany the request for leave. The physician statement shall contain the following:

(a) In the licensed practitioner's [physician's] judgement the employee is incapable of performing the essential duties of the job;

(b) Length of time that the licensed practitioner [physician] would estimate that the employee's illness or disability will last;

(c) Restrictions which would render the employee in the licensed practitioner's [physician's] judgement incapable of performing the essential duties of the job; and

(d) Special considerations that the licensed practitioner [physician] recommends be applied to accommodate the employee once released to return to work.

(8) [(7)] An appointing authority may place an employee, who fails to provide a medical statement upon request, on sick leave if:

(a) The employee's health might jeopardize others; or

(b) The employee's health prevents performance of his duties and responsibilities; and

(c) Who on request fails to produce a satisfactory medical certificate.

(9) [(8)] Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(10) [(9)] An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(11) [(10)] A former employee who is [Former employees who

are] reinstated or reemployed shall have his [their] previous rate of earning annual leave [accumulated] and unused sick leave balances reinstated.

(12) [(11)] Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy. Maternity leave shall not exceed twelve (12) weeks [seven (7) pay periods], unless the appointing authority approves additional maternity leave. However, [provided] the total leave shall [does] not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual leave. The employee may use [and] compensatory time if available.

(b) If all leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner. [If an employee is approved for maternity leave that extends beyond the period of absence required by the employee's licensed practitioner, only accumulated annual and compensatory time may be used. If accumulated annual and compensatory leave is not available the employee shall be placed on leave without pay.] [The employee shall submit a written request for maternity absence which shall include a doctor's statement indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's doctor may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal seven (7) pay periods.]

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond [the normal] twelve (12) weeks.

Section 7. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon request of an employee for reasons provided for in Section 6 of this administrative regulation and this section.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if [provided] the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic [doctor's] statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 8. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his for-

mer position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position[s] for which the employee qualifies and is able to perform the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform the employee may be laid off. [If there is no available position which the employee is qualified or is willing to accept, the employee shall be laid off in accordance with administrative regulation 902 KAR 8:080.]

(3) An employee shall be considered to have resigned if the employee:

(a) Has been on continuous sick leave without pay for twenty-six (26) pay periods; and

(b) Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

(c) Is unable to return to work; or

(d) Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

(e) The appointing authority has been unable to place the employee in a vacant position. [An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested by the appointing authority to return to work at least ten (10) days prior to the expiration of sick leave without pay, may be dismissed by the appointing authority.]

Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority, may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section.

Section 10. Court Leave. An employee shall be entitled to a leave

of absence from duties, without loss of pay or time, on days during which the employee is subpoenaed by a court to serve as a juror or witness except in those cases where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work.

Section 11. Military Leave. (1) An employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his duties without the loss of pay or time, upon request, to serve under orders on training duty for a period not to exceed seventy five (75) hours in any one (1) calendar year. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

Section 12. Voting Leave. The appointing authority shall allow each employee ample time to vote. The absence shall not be charged against accumulated leave.

Section 13. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training or for other circumstances. [The appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year to an employee who has exhausted all accumulated annual, compensatory or sick leave credit, if applicable.]

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods. [An appointing authority, with the approval of the department, may grant a leave of absence with or without pay for a period not to exceed twenty-six (26) pay periods for the following purposes:

(a) Agency directed or approved educational leave to attend a college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the agency; or

(b) Purposes other than those provided by this section which are deemed to be in the best interest of the agency.]

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 14. Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave;

and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 15. Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, PL 103-3 and CFR 29 Part 825, if applicable.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Section 16. [15:] Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) The absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 17. [16:] Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

- (a) The first day of January and one (1) extra day;
- (b) The third Monday in January;
- (c) The third Monday in February;
- (d) One-half (1/2) day for Good Friday;
- (e) The last Monday in May;
- (f) The fourth day of July;
- (g) The first Monday in September;
- (h) The fourth Thursday in November plus one (1) extra day;
- (i) The twenty-fifth of December and one (1) extra day;
- (j) Presidential election day.

(2) If any of the days enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 18. [17:] Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337 authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all excess time worked. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employees current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337.

Section 19. [18:] Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for any unused accumulated compensatory time.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998
FILED WITH LRC: June 3, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:130. Participation of local health department employees in political activities.

RELATES TO: KRS 211.170(1), (2), 212.170(4)[, 212.870]

STATUTORY AUTHORITY: KRS 194.050, 211.1755, [211.090; 212.170[, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes guidelines for employee political activity. [KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 [House Bill 631] provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs participation of local health department employees in political activities.]

Section 1. Political Activities of Employees. An employee in the classified service shall not:

(1) Serve on or for a [any] political committee, party, or other similar organization;

(2) Serve as a delegate or alternate to a caucus or party convention, but may vote in the selection of;

(a) A delegate to a party convention; and

(b) A person to serve on a precinct committee; [delegates to a party convention and in the selection of precinct committeemen and committeewomen;]

(3) Solicit or handle a political contribution [political contributions];

(4) Sell or solicit the sale of a ticket or other item for a [Solicit the sale of or sell items or tickets for any] political party, faction, or candidate; however, an employee may voluntarily purchase the item or a ticket [items or tickets];

(5) Serve as an officer of a political club, as a member or officer of any of its committees, or address a club on a partisan political matter [any partisan political matters], or be active in organizing it;

(6) Serve in connection with the preparation for, organizing or conducting a political meeting or rally or address a political meeting on a [any] partisan political matter except to vote;

(7) Engage in partisan activity at the polls during a primary, regular, or special election [elections] in the position of checker, challenger, or watcher;

(8) Solicit votes and assist voters to mark ballots;

(9) Become a candidate for nomination or election to a federal, state, county, or municipal office, except for a school board district office, which is to be filled in an election in which party candidates are involved or for which compensation is paid;

(10) Solicit another person to become a candidate [others to become candidates] for nomination or election to an office [those offices] described above;

(11) Distribute partisan campaign literature or material;

(12) Initiate or circulate a partisan political nominating petition [petitions]; or

(13) Canvass a district or solicit political support for a party, faction, or candidate, in person or in writing.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: February 25, 1998
FILED WITH LRC: February 25, 1998 at 11 a.m.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(As Amended at ARRS, August 4, 1998)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.280
STATUTORY AUTHORITY: KRS 194.050, 212.1755, 212.170, 212.870[; EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes the process for appointing a health officer or health department director and the provisions of the merit system. [KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system.] [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Appointment of Health Officer. (1) An agency shall appoint ~~[be under the direction of]~~ a health officer [appointed] in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; and

(c) ~~[(b)]~~ 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; and

(d) ~~[(c)]~~ 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) ~~[(d)]~~ 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

(4) An individual promoted to the position of health officer shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; or

(b) The minimum of the grade assigned to the health officer. [may receive a ten (10) percent or fifteen (15) percent increase in salary over the employee's current salary, or to a salary increase to the minimum of the grade assigned to the health officer classification, whichever is higher.]

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments;

(c) ~~[(b)]~~ 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation;

(d) ~~[(c)]~~ 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) ~~[(d)]~~ 902 KAR 8:140, Appointment of health officers of local health departments.

(5) An individual promoted to the position of health department director shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; or

(b) The minimum of the grade assigned to the health department director. [may receive a ten (10) percent or fifteen (15) percent increase in salary over the employee's current salary, or to a salary increase to the minimum of the grade assigned to the appropriate health department director classification, whichever is higher.]

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a pre-termination conference.

(2) If no request for a pretermination conference is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for a pretermination conference is made, the pre-termination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pretermination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position **shall not** ~~[may only]~~ be reverted to a position in the classified service **unless** ~~[for which]~~ he qualifies.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY LOTTERY CORPORATION
(Amended After Hearing)

202 KAR 3:030. Retailer administrative regulation.

RELATES TO: KRS 154A.060(2)(a)
STATUTORY AUTHORITY: KRS 154A.050(1)(d),
154A.400(1)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 154A.400(1)(a), the Kentucky Lottery Corporation is required to develop and maintain a statewide network of lottery retailers that will serve the public convenience or promote the sale of lottery tickets, while insuring the integrity of the lottery. To govern the selection of lottery retailers, KRS 154A.400(1)(b) provides that the Board of Directors of the Kentucky Lottery Corporation shall, by administrative regulation, develop a list of objective criteria upon which the selection of lottery retailers shall be based. This administrative regulation adopts by administrative regulation the retailer administrative regulations of the Kentucky Lottery Corporation by which lottery retailers shall be governed.

Section 1. Retailer Administrative Regulations. On January 30, 1998, the Board of Directors of the Kentucky Lottery Corporation promulgated the retailer administrative regulations for the Kentucky Lottery Corporation and further approved revisions to the administrative regulations on April 24, 1998 and July 24, 1998.

Section 2. (1) The "Kentucky Lottery Corporation Retailer Administrative Regulations, as promulgated on January 30, 1998, and revised on April 24, 1998 and July 24, 1998" are incorporated herein by reference.

(2) The "Kentucky Lottery Corporation Retailer Administrative Regulations, as promulgated on January 30, 1998, and revised on April 24, 1998 and July 24, 1998" may be inspected, copied, or obtained from Camille Bathurst, General Counsel, at the corporate offices of Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, from 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, Jr., President and CEO
CAMILLE BATHURST, General Counsel
APPROVED BY AGENCY: August 13, 1998
FILED WITH LRC: August 14, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contract Person: Michael J. Denney, Attorney

(1) Type and number of entities affected: This regulation will affect the Kentucky Lottery Corporation (KLC), retailers licensed by the KLC, retailer applicants, and owners of retailers and retailer applicants.

(2) Direct or indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated.

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

1. First year following implementation: The regulations provide that the KLC shall commence a program of relicensing of all retailers

with the new licensing forms promulgated in conjunction with the adoption of the retailer regulations. Thereafter, the KLC shall institute a program of continuous renewal of all retailer licenses, renewing 1/8 of all retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every 2 years. To be relicensed and to receive a renewal of a retailer license, each retailer shall be required to complete, execute and submit new licensing documents, and to successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The regulations provide that the KLC shall commence a program of relicensing of all retailers with the new licensing forms promulgated in conjunction with the adoption of the retailer regulations. Thereafter, the KLC shall institute a program of continuous renewal of all retailer licenses, renewing 1/8 of all retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every 2 years. To be relicensed and to receive a renewal of a retailer license, each retailer shall be required to complete, execute and submit new licensing documents, and to successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet. The Kentucky Lottery Corporation shall be responsible for the cost of the relicensing program.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See (3)(a)(1), above.

(4) Assessment and anticipated effect on state and local revenues: According to KRS 154A.130(1), surplus net revenues of the Kentucky Lottery Corporation are required to be transferred to the General Fund; therefore, any increase in costs to the corporation could reduce transfer of dividends to the Commonwealth. However, the increased costs of the regulation are expected to be minimal and to have no impact on state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation will be implemented and enforced with agency funds.

(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: No economic impact is expected.

(b) Kentucky: No economic impact is expected.

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

(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 on public health and environmental welfare are expected in the geographical area in which the proposed regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain the detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, rule, administrative regulation or governmental policy appear to conflict, overlap or duplicate the proposed 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? Tiering was not applied. The proposed administrative regulation only applies to the Kentucky Lottery Corporation, retailers licensed by the KLC, retailer applicants, and owners of retailers and retailer applicants.

**CABINET FOR HEALTH SERVICES
 Department For Medicaid Services
 Division of Administration and Development
 (Amended After Hearing)**

907 KAR 1:595. Model Waiver II services and payments.

RELATES TO: KRS 314.011, 42 CFR 440.70, 440.185, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1315, HB 132 of 1998 GA

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes 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 the coverage provisions relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a waiver granted by the U. S. Department for Health and Human Services in accordance with 42 USC 1396n(c).

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agent or representative.

(2) "Home health agency" means a facility licensed by the Office of the Inspector General to provide home health services.

(3) "Model Waiver II services" means community-based waiver in-home ventilator services provided to a Medicaid-eligible recipient who:

- (a) Is dependent on a ventilator; and
- (b) Would otherwise require a nursing facility (NF) level of care in a hospital based NF which will accept a recipient who is dependent on a ventilator.

(4) "Registered nurse" (RN) is defined in KRS 314.011.

(5) "Licensed practical nurse" (LPN) is defined in KRS 314.011.

(6) "Respiratory therapist" (RT) means an individual who:

- (a) Has successfully completed a training program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(b) Who is certified or registered by successfully completing the registry examination for respiratory therapists administered by the National Board for Respiratory Care, Inc.

(7) "Ventilator dependent" means the condition or state of an individual who requires the aid of a ventilator (respiration stimulating mechanism) for his respiratory function and meets usual high intensity nursing facility patient status criteria in accordance with 907 KAR 1:022, Section 4.

Section 2. General Coverage Provisions. (1) Services shall be provided to a Medicaid eligible recipient:

- (a) Who meets the NF level-of-care determination for ventilator dependency; and
- (b) For whom the cost of Model Waiver II services does not exceed the cost of traditional institutional ventilator care.

(2) The peer review organization (PRO) designated by the department shall make the level-of-care determination.

(3) A Medicaid eligible recipient may choose Model Waiver II services as an alternative to traditional institutional services.

(4) A Medicaid eligible recipient requesting to receive Model Waiver II services shall choose a qualified home health agency which has obtained a valid provider number for provision of services.

Section 3. Provider Participation. A home health agency participating in the Model Waiver II Program shall meet the applicable certification requirements for providing home- and community-based waiver

services in accordance with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:675 and 907 KAR 1:030.

Section 4. Covered Services. (1) The following shall be covered Model Waiver II services:

(a) Skilled nursing provided by:

1. A registered nurse (RN);
2. A licensed practical nurse (LPN); or
- (b) Respiratory therapy (RT).

(2) Model Waiver II services shall be provided by a qualified individual employed by or under contract through the home health agency as a:

- (a) Registered nurse (RN);
- (b) Licensed practical nurse (LPN); or
- (c) Respiratory therapist.

Section 5. Prior Authorization for a Service. (1) Prior to authorizing a Model Waiver II service the Department shall ensure that:

- (a) Client ventilator-dependent status is met;
- (b) Service is available to meet the need of a recipient; and
- (c) The service does not exceed the cost of traditional institutional ventilator care.

(2) An evaluation of the need for continuation of service (MAP-9) and a signed plan of treatment by a physician shall be completed every two (2) months, not to exceed sixty (60) days.

Section 6. Payment for Services. (1) The department shall reimburse a participating home health agency for the provision of covered Model Waiver II services as follows:

(a) Reimbursement shall be based on a fixed fee for a unit of service provided for each covered service defined in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.

(b) The fixed fee for skilled nursing services provided by:

1. A registered nurse (RN) shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service.

2. A licensed practical nurse (LPN) shall be twenty-nine (20) dollars and ten (10) cents for each unit of service.

3. A respiratory therapist (RT) shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.

(c) Reimbursement shall not exceed sixteen (16) units of service per day.

(d) Payment shall not be made for services to any individual for whom it can reasonably be expected that the cost of the home- and community-based services furnished under this administrative regulation would exceed the cost of these services if provided in a hospital-based NF.

Section 7. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 8. Incorporation by Reference. (1) MAP-9, "Prior Authorization for Health Services", December 1995 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.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: 100 recipients who

are dependent on a ventilator.

(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: \$814,828.00 (Costs)

2. Continuing costs or savings: Second year: \$2,910,102 (Costs); Third year: 1,746,061 (Costs); Fourth year: 1,164,041 (Costs).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Based on our review expenditures will increase in conformity with the following phase-in schedule:

FYE	Projected Increased Expense	Federal Funds 70.37%	State Funds 29.63%
06/30/98	\$ 814,828	\$573,394	\$241,434
06/30/99	2,910,102	2,047,839	862,263
06/30/00	1,746,061	1,228,703	517,358
06/30/01	1,164,041	819,136	344,905

Source of revenue to be used for implementation and enforcement of administrative regulation are federal and state matching funds. Federal matching funds of 70.37% and state matching funds of 29.63% as outlined above State revenues will come from the general fund or the agency fund enacted in the current 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: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: recipient's health would improve; a decrease in hospitalizations may occur; a decrease in morbidity may occur.

(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: A rise in recipients who are dependent on a ventilator in nursing facility admissions will result in a need for the construction of more facilities for persons who are dependent on ventilators.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 1396a(a)(10)(B) and (C)(i)(III).

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: A waiver of the sections identified in (9) was requested from the Health Care Financing Administration and was granted.

(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 impli-

cated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: Budget neutral.

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Administration and Development
(Amended After Hearing)

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

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

STATUTORY AUTHORITY: KRS 194.050, HB 132 of 1998 GA
EFFECTIVE: August 6, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes 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 provides for coverage and payments for Impact Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

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

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

(3) "Licensed practitioners of the healing arts" means a practitioner of the healing arts who is licensed in accordance with KRS 311.271 or who is otherwise exempt from licensure pursuant to

KRS 335.010(4).

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

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

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

Section 2. Interagency Agreement. Services provided pursuant to Section 3 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of behavioral disability and restoration of a recipient to his highest possible functional level, and which shall be within the following general areas:

(1) Targeted case management services provided to:

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

1. In the custody of the state;
2. Under the supervision of the state; or
3. At risk of being in the custody of the state; and
4. In an institution; or
5. At risk of institutionalization.

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

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

(2) Rehabilitative services provided to:

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

1. In the custody of the state;
2. Under the supervision of the state; or
3. At risk of being in the custody of the state; and
4. In an institution; or
5. At risk of institutionalization.

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

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

(3) A service covered as a rehabilitative service shall be one (1) of the following:

- (a) Individual services;
- (b) Group services;
- (c) Collateral services;
- (d) After school and summer program services;
- (e) Day treatment services;
- (f) Partial hospitalization services;
- (g) Intensive out-patient services;
- (h) Therapeutic foster care services;
- (i) Therapeutic group residential care services;
- (j) Residential crisis stabilization services; or
- (k) Wilderness camp.

Section 4. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to Section 3 of this administrative regulation.

(1) The Title V agency shall provide a service:

(a) Directly;

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

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

(2) A service which is provided directly by the Title V agency or by the Departments for **Community Based [Social]** Services or Mental Health and Mental Retardation Services or their subcontractors shall

meet requirements established in the Impact Plus Manual for the service and shall include:

(a) A plan of care;

(b) Documentation of supervision of staff as appropriate;

(c) Documentation of services provided; and

(d) Reports as established by the department regarding utilization, services, expenditures and outcome data.

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

Section 5. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall be required to provide to the department and representatives of agencies or offices referenced in subsection (4) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding payments claimed by the provider for furnishing services; and

(c) Information documenting the cost of the service.

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

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

(a) Current or previous provider or subcontractor staff with regard to services provided pursuant to Section 3 of this administrative regulation; and

(b) Recipients of targeted case management or rehabilitative services with regard to services received pursuant to Section 3 of this administrative regulation.

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

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

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

(c) The state Attorney General's Office;

(d) The state Auditor's Office; and

(e) The Office of the Inspector General.

Section 6. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the services as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health, Mental Health and Mental Retardation Services and **Community Based [Social]** Services shall not be reimbursed by the department.

(1) A payment shall be based on actual expenditures incurred for the provision of the service by the Title V agency or the Departments for Mental Health and Mental Retardation Services and **Community Based [Social]** Services.

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

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

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

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

(b) To facilitate the negotiated rate approval process the department's representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

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

(a) Fifteen (15) minutes;

(b) One (1) hour;

(c) One (1) day; or

(d) One (1) month.

Section 7. Incorporation by Reference. (1) "Impact Plus Manual", Department for Medicaid Services, **September [May]** 1998, is

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

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

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

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

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

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

1. First year following implementation: Providers will be required to provide data to the department on a per request basis to track utilization of services, expenditures and outcome data.

2. Second and subsequent years: Providers will be required to provide data to the department on a per request basis to track utilization, services, expenditures and outcome data.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

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

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No comments were received regarding the effects of this administrative regulation.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients by not providing medically necessary services to Medicaid eligible children who are at risk of institutionalization or at risk of being in the custody of the State.

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does set minimum or uniform standards for targeted case management services as referenced in 42 USC 1396a.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998
PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 14, 1998

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:170. Membership form requirements.

RELATES TO: KRS 16.530, 61.525, 61.526, 61.540, 61.542, 61.545, 61.625, 78.540, 1998 Ky. Acts ch. 105, sec. 14 [16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852]

STATUTORY AUTHORITY: KRS 61.645(9)(f), 26 CFR 1.401-1(b)(1)(i), 26 USC 401(a) (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. KRS 61.542 requires a member to file a designation of beneficiary. KRS 61.625 establishes the conditions under which a member may apply for a refund. 26 USC 401(a) provides that a qualified pension plan cannot make distributions prior to normal retirement age if a separation from service has not occurred. This administrative regulation establishes the information required for membership and establishes that the member shall not receive a refund unless the member has terminated employment.

Section 1. An employee eligible for participation on the date his agency first participates shall complete a "Form 2010, [an] Election or Rejection of Participation" [Form, Form 2, dated July 1991], designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a "Form 2001, Membership Information" [Form, Form 1, dated December 1989]. The membership form shall be kept on file in the retirement office.

Section 3. An [The] employee may also complete a "Form 2035, Beneficiary Designation" [Form, Form 35, dated December 1992] which shall be sent to the retirement office. [If a designation of beneficiary form is not completed, if no beneficiary is named or if an improper beneficiary is named, the member's estate shall be the beneficiary until the member files a different designation with the retirement system.]

Section 4. (1) If an [the] employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee and the "Form 2026, Simultaneous Employment Choice of Systems" [Form, Form 26, dated February 1991], necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 5. Pursuant to KRS 61.625, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning a "Form 4525, [an] Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection". The Kentucky Retirement Systems shall not issue a refund to a member unless the member has terminated employment with his employer. [Form 25, dated December 1992.]

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

(a) "Form 2010, Election or Rejection of Participation (Rev. 5/98)";

(b) "Form 2001, Membership Information (Rev. 5/98)";

(c) "Form 2035, Beneficiary Designation (Rev. 5/98)";

(d) "Form 2026, Simultaneous Employment Choice of Systems (Rev. 5/98)"; and

(e) "Form 4025, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection (Rev. 3/97)".

(2) This material may be inspected, copied or [The forms required by this administrative regulation are incorporated by reference and may be] obtained from the Kentucky Retirement Systems [retirement] office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

RANDY OVERSTREET, Chair

WILLIAM P. HANES, ESQ., Deputy Commissioner of Benefit Services

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-4646, facsimile (502) 564-5656.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Employees of KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: This regulation will not increase costs.

(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: There are no additional paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement system.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no change in paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with the regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

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

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: 26 USC 401(a) prohibits pension payments prior to retirement or separation from service.

(8) Assessment of expected benefits: The tax-exempt status of the retirement system is dependent on compliance with federal law.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(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: 1998 Ky. Acts ch. 105, sec. 14, provides for that a member may receive a refund of his contributions if the member is laid off.

(a) Necessity of proposed regulation if in conflict: This regulation prevents payments of member refunds except where employment has been terminated as required by 26 USC 401(a).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 61.645(9)(f) states that provisions of the retirement statutes that conflict with federal law or regulation shall not be available to the member.

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? Tiering was not applied because the federal requirement applies the same to all members of the system.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government this administrative regulation will affect.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. 26 USC 401(a)

2. This administrative regulation requires that a member shall not be paid a refund of his contributions unless the member terminates his employment.

3. The federal statute requires that prior to normal retirement age there must be a separation from service before a qualified pension plan may make distributions to a member.

4. This administrative regulation requires a separation from service before a payment of contributions as required to comply with the requirements of a qualified plan under 26 USC 401(a). 1998 Ky. Acts ch. 105, sec. 14, provides that a retired member may apply for a refund after being in lay-off status for 90 days. Because this provision could result in the member receiving an in-service distribution in direct conflict with the federal provisions, 105 KAR 1:170 is amended to prohibit distributions prior to termination of employment.

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (Amendment)

201 KAR 8:140. Continuing education compliance.

RELATES TO: KRS 313.080(1), (2)

STATUTORY AUTHORITY: KRS 313.080

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth guidelines and schedule of points to be accumulated by each [licensed] dentist and dental hygienist for compliance with the continuing education requirement for relicensure.

Section 1. Each licensed dentist requesting renewal of license on or before December 31, 1998 shall show evidence which is satisfactory to the Kentucky Board of Dentistry that he has accumulated fifteen (15) points of continuing education. The evidence of fifteen (15) points of continuing education shall be submitted on the "Continuing Education Credit Record" no later than December 31st of each year together with appropriate written verification of actual attendance of such course by the licensee. Included in the fifteen (15) hours of continuing education required by this subsection each licensed dentist requesting renewal of his license shall show evidence which is satisfactory to the Kentucky Board of Dentistry that he has successfully completed a course, approved by the Kentucky Cabinet for Human Resources, pertaining to acquired immunodeficiency syndrome.

Section 2. (1) Of the fifteen (15) points required by Section 1 of this administrative regulation, ten (10) points shall be scientific based, shall have the prior approval of the board, and one (1) continuing education point shall be approved for each hour of such course. Five (5) of the fifteen (15) points required by Section 1 of this administrative regulation may be professional or business related, and each such source shall also have the prior approval of the board.

(2) The following schedule of points rating is hereby adopted: one (1) continuing education point shall be approved for attendance at each of the following types of meetings: local dental meetings, regional and national dental meetings, dental specialty meetings, study club dental meetings, hospital staff meetings, and nursing home meetings. Two (2) continuing education points shall be approved for attendance at state dental meetings and officers conferences.

(3) During each two (2) year period, commencing with January 1, 1991, each licensed dentist shall show proof of successful completion of a course in cardiopulmonary resuscitation, said course to be approved by the Kentucky Board of Dentistry.

Section 3. The Board of Dentistry or the secretary-treasurer of the board may approve for continuing education credit such other courses as may be deemed worthy of fulfilling the requirement as related to continuing education.

Section 4. Minimum CE requirements. Each licensed dentist requesting renewal of license on or after January 1, 2000, and each licensed dental hygienist requesting renewal of license on or after January 1, 1999, shall fulfill all requirements of the three (3) categories listed below:

(1) Category A. All licensees shall take a minimum of a two (2) hour course on HIV/AIDS as required by KRS 214.610 (1) and a BLS (basic life support) course certified by either the American Heart Association or the American Red Cross and shall maintain current BLS certification.

(2) Category B. Twenty (20) hours of scientific dental based courses given in a presentation format.

(3) Category C. Ten (10) hours of CE from any of the following:

(a) Scientific-dental based courses given in a presentation format.

(b) Business.

(c) Home study.

(d) Magazine or journal articles.

(e) Computer or video articles.

(f) Nondental health related courses.

Section 5. Schedule of Points. The following schedule of points is hereby adopted:

(1) Each clock hour of participation in a presentation course will receive one (1) point.

(2) Each clock hour of participation in a business course will receive one (1) point; or one (1) business point shall be approved for attendance at each of the following types of meetings:

(a) Local dental meetings.

(b) Regional dental meetings.

(c) National dental meetings.

(d) Dental specialty meetings.

(e) Study club dental meetings.

(f) Hospital staff meetings.

(g) Nursing home meetings.

(3) Two (2) business points granted for attendance at annual state meetings.

Section 6. Procedure for Reporting CE Points. (1) Reporting period shall be every two (2) calendar years (renewal period).

(2) Reporting. Each licensee shall attest to the actual number of CE points earned during the reporting period. No points shall be carried over to the following reporting period.

(3) Recordkeeping. The original CE records shall be kept by the licensee for a period of five (5) years and presented upon request by the board for audit.

(4) Audit. If selected by the board for audit the licensee shall return to the board the requested proof of CE within fifteen (15) days.

Section 7 Course Approval. (1) Courses must be presented by an approved provider.

(2) Courses must be related to the dental field. If a course is not provided by an approved provider, a CE Approval Form must be submitted to the Kentucky Board of Dentistry for approval prior to the licensee seeking credit for that CE.

HAROLD M. SMITH, President

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: August 8, 1998

FILED WITH LRC: August 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 25, 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 September 18, 1998, five workdays 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 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 2750

licensed dentists and 1400 licensed dental hygienists, who are all required to renew his license 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: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This fee regulation will have a negligible financial impact on the cost of doing business for dentists and dental hygienists in Kentucky as it very slightly increases the continuing education requirements but also allows some requirements to be met more conveniently, that is, by reading dental materials in journals, books, and computer formats.

(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: 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: N/A

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency 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: Current regulations do not allow alternative methods of complying with continuing education; this regulation will allow compliance through some alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will allow dentists and dental hygienists more flexibility to comply with continuing educational requirements thus positively impacting public health and welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Public health may be harmed by preventing licensees from more flexible methods of complying with continuing education in Kentucky.

(c) If detrimental effect would result, explain detrimental effect: Licensees would have to spend more time and money on complying with continuing education.

(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 conform to the biannual licensure renewal of 1998 Ky. Acts ch. 556.

(11) TIERING: Is tiering applied? Yes. Although there are two classes of regulated persons, dentists and dental hygienists, this regulation sets the same method of compliance for continuing education for both on or after the licensure year January 1, 2000. Different continuing education requirements and accounting apply to these 2 classes of regulated persons on or before December 31, 1999. 1998 Ky. Acts ch. 556 requires dentists to renew for 1 year on or before December 31, 1998, and requires dental hygienists to renew for 2 years on or before December 31, 1998. On or after January 1, 1999, both dentists and dental hygienists are required to renew for 2 years. Thus, before that date when both are required to renew for 2 years, this administrative regulation tailors the continuing education compliance for dentists who have 1 year to comply

with continuing education for a 1 year renewal cycle and for dental hygienists who have 2 years to comply with continuing education for a 2 year renewal cycle.

GENERAL GOVERNMENT CABINET
Kentucky Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.140(2)

STATUTORY AUTHORITY: KRS 316.210(1), 316.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125, [and] 316.130, and 316.140 require the board to set out in administrative regulations certain fees. The function of this administrative regulation is to set these fees.

Section 1. The funeral establishment license fee is \$100.

Section 2. The embalmer's license renewal fee is thirty (30) dollars.

Section 3. The funeral director's license renewal fee is thirty (30) dollars.

Section 4. The late fee for a funeral establishment license renewal is \$100.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal is thirty (30) dollars.

Section 6. The fee for an annual courtesy card is seventy-five (75) dollars.

JOHN BARKER, Chairman

JAMES J. GRAWIE, Assistant Attorney General

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 15, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of September, 1998, at 1 p.m. in the Capitol Building, 700 Capitol Avenue, Room 114, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 14th day of September, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Emma Lou Hartledge, Executive Director, 7025 W. Highway 22, Suite 7, Crestwood, Kentucky 40014, Phone (502) 241-3918, Fax (502) 241-4297.

REGULATORY IMPACT ANALYSIS

Agency Contact: James J. Grawie

(1) Type and number of entities affected: The courtesy card fee affects only embalmers or funeral directors from states other than Kentucky who are seeking to perform services in the Commonwealth, and who thus apply for a Kentucky courtesy card. The exact number of such out-of-state licensees is unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Minimal direct costs for out-of-state licensees on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, includ-

ing 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: Licensing fees are considered state revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(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: This regulation was amended to prescribe the fee for out-of-state licensed funeral directors and embalmers seeking to obtain a Kentucky courtesy card to allow them to receive and transport a dead human body to and from Kentucky and to perform funeral services and burials in Kentucky, and thus comply with state law. No other alternatives were deemed 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: 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 were not implemented.

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

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

(a) Necessity of proposed regulation if in conflict: 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 out-of-state licensees are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), (2), (5), 314.051(2), (3)

STATUTORY AUTHORITY: KRS 314.041(1), (2), 314.051(2), (3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. [KRS 314.041(5) requires an applicant for licensure as a registered nurse to pay applicable examination fees. KRS 314.051(2) requires an applicant for licensure as a licensed practical nurse to pay applicable examination fees.] KRS

314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program.

(1) To be eligible for licensure by examination [for a graduate of a Kentucky program or other state or territorial nursing program:] an applicant shall:

(a) ~~For a graduate of a Kentucky program of nursing, have the nursing program submit verification on "Certified List of Program of Nursing Graduates" that the applicant has:~~

1. Completed the program of nursing; and

2. Successfully completed all requirements for a degree, diploma or certificate;

(b) ~~For a graduate of a program of nursing outside Kentucky, submit an official transcript of the nursing program;~~

(c) Submit:

1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);

2. The licensure application [for licensure] fee as established in 201 KAR 20:240; and

3. One (1) current passport type photograph [that:

a. Is two (2) inches by three (3) inches;

b. Was taken within the past six (6) months;

c. Is signed and dated by:

(i) The applicant on the front under the facial features; and

(ii) The nurse administrator of the U.S. nursing program, if the applicant graduated from a U.S. nursing program; and

d. Is not a snapshot];

(b) [(d)] Submit a certified copy of the court record of each misdemeanor or felony conviction and [with] a letter of explanation that addresses each conviction;

(c) [(e)] Notify the board [in writing] as soon as a new address is established after submitting the application;

(d) [(f)] Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(e) When taking the examination, [(g)] abide by and cooperate with security procedures adopted [established] by the board[, when taking the examination];

(f) [(h)] Apply to take and pass the National Council Licensure Examination [or its equivalent as required by Section 3 of this administrative regulation]; and

(g) [(i)] Pay the fees for application for licensure established by 201 KAR 20:240; and

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office. This requirement shall apply to all applications received by the board after the effective date of this administrative regulation and all applications pending on the effective date.

(3) The name of the applicant shall appear on the "Certified List of Graduates" as established in 201 KAR 20:260 or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. [applicant is declared eligible to take the examination:]

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

(1) If licensed in another country, or in a jurisdiction or territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:

(a) Applicant is a licensee in good standing;

(b) License has not been revoked, suspended, or probated; and

(c) Licensee has not been suspended or otherwise disciplined in the licensing country.

(2) An applicant shall submit proof of legal permanent or tempo-

rary residency under the laws and regulations of the United States.

(3) An applicant shall meet the requirements of Section 1 of this administrative regulation.

(4) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

~~Section 3. [Licensing Examination Standards. (1) An applicant shall pass the national council licensure examination or an examination that meets the criteria established by subsection (2) of this section:~~

~~(2) An applicant who has taken an examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:~~

~~(a) Accepted psychometric procedures are used in the development of the examination;~~

~~(b) The examination is available to the board in the English language;~~

~~(c) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;~~

~~(d) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;~~

~~(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;~~

~~(f) The examination is revised after each administration to insure currency and security of content; and~~

~~(g) The examination is given under strict security measures;~~

~~Section 4. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after:~~

~~(a) meeting the requirements of Section 1 of this administrative regulation, [and, if applicable, Section 2 of this administrative regulation]; and~~

~~(b) Submission of:~~

~~1. The application, as required by 201 KAR 20:370, Section 1(1); and~~

~~2. The applicable fee.]~~

~~(2) The applicant shall not be eligible to take the examination more often than once every ninety-one (91) days. [one (1) time during a three (3) month period.]~~

~~Section 4. [5.] Release of Examination Scores. The board shall release examination [numerical] results to:~~

~~(1) The candidate;~~

~~(2) Other state boards of nursing;~~

~~(3) The National Council of State Boards of Nursing, Inc.; and~~

~~(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.~~

~~Section 5. [6.] Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates", (2/96), Kentucky Board of Nursing, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.~~

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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,

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Applicants for licensure by examination. Number unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: No significant changes are being made.

(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: Board's general operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: Unknown

(b) Kentucky: Unknown

(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: No significant change

(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 governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 314.041(4), 314.051(5), 314.101(4)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(4) and 314.051(5) authorize the board to issue a license to practice

nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. This administrative regulation establishes the requirements for licensure by endorsement and provides a means for applicants to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a) ~~Hold a high school diploma or equivalent;~~

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure equivalent to Kentucky requirements;

(b) ~~[(c)] Have taken the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 5 of this administrative regulation; [a licensure examination acceptable to the board and shall have achieved a passing score equivalent to the requirements established in 201 KAR 20:070 or as determined by the board for an applicant licensed prior to 1953];~~

(c) ~~[(d)] Have and submit a copy of a current active license to practice nursing in another U.S. jurisdiction or territory [Canada];~~

(d) ~~Complete [(e) Accurately complete and submit] the application form, as required by 201 KAR 20:370, Section 1(1), [and necessary information for licensure in Kentucky];~~

(e) ~~[(f)] Submit one (1) current passport type photograph [that:~~

1. Is two (2) inches by three (3) inches;

2. Was taken within the past six (6) months;

3. Is signed and dated by the applicant on the front under the facial features; and

4. Is not a snapshot];

(f) ~~[(g)] Submit the current fee for a licensure application, as established by 201 KAR 20:240;~~

(h) ~~Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure or the country of original licensure (if not licensed in the United States); including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any pending disciplinary action;~~

(g) ~~[(h)] Report each disciplinary action taken or pending on a license by another jurisdiction;~~

(h) ~~[(i)] Submit a certified copy of the court record of each misdemeanor or felony conviction and [official copies of court records of any misdemeanor and felony convictions with] a letter of explanation that addresses each conviction; [and]~~

(i) ~~Request the U.S. jurisdiction or territory of initial licensure to submit a verification of licensure by examination to the board which shall include the following information:~~

1. Date of initial licensure;

2. Examination results;

3. Name of the program of nursing completed and date of graduation;

4. A statement that the applicant's license has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any disciplinary action; and

(j) ~~[(k)] Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150.~~

(2) An application is valid for a period of six (6) months ~~[one (1) year from date of submission to board]~~. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change the applicant's name after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months ~~[one (1) year from the date of receipt of application]~~, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) A graduate

of a foreign nursing school shall:

(a) Meet the requirements established in Section 1 of this administrative regulation; and

(b) Submit an official transcript of the nursing program.

(2) A graduate of a foreign nursing school who is not a citizen of the United States shall submit evidence of legal permanent or temporary residency in the United States.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fifteen (15) contact hours in continuing education for each year since the last year in which the applicant can demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure; or

(b) 1. Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; and

2. Submits evidence that verifies this practice.

(3) An applicant shall not be required to complete more than 150 contact hours in continuing education, if at least thirty (30) contact hours were earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 4. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a) through (h) of this administrative regulation may be issued a temporary work permit.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and subject to the penalties listed in KRS Chapter 314.

Section 5. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or National Council Licensure Examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures are used in the development of the examination;

(2) The examination is available to the board in the English language;

(3) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(4) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination is 0.80 or higher;

(6) The examination is revised after each administration to insure currency and security of content; and

(7) The examination is given under strict security measures.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Applicants for licensure by endorsement. Number unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: No significant changes.

(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: Board's general operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: Unknown

(b) Kentucky: Unknown

(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: No significant change

(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 governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(5), 314.042(3), (6), 314.051(2), 314.071(1), (2), 314.073(7), 314.161
STATUTORY AUTHORITY: KRS 61.874(3), 314.131, 314.142, 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. This administrative regulation establishes those fees.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect a fee for:

- (a) An application for licensure;
- (b) An application for registration;
- (c) Licensure renewal or reinstatement.
- (2) The fee for an application shall be:
 - (a) Licensure as a registered nurse - eighty (80) dollars.
 - (b) Licensure as a licensed practical nurse - eighty (80) dollars.
 - (c) Biennial renewal of active license - fifty-five (55) dollars.
 - (d) Biennial renewal of inactive license - thirty-five (35) dollars.
 - (e) Reinstatement of license - eighty (80) dollars.
 - (f) Active to inactive license status - forty (40) dollars.
 - (g) Inactive to active license status - fifty (50) dollars.
 - (h) Full verification of [original] licensure, temporary work permit, credential or registration history - twenty-five (25) dollars.
 - (i) Duplicate license or registration card or letter - twenty (20) dollars.
 - (j) Registration as an advanced registered nurse practitioner - eighty (80) dollars.
 - (k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty-five (55) dollars.
 - (l) Reinstatement of registration as an advanced registered nurse practitioner - eighty (80) dollars.
- (3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education and for a renewal or reinstatement of the approval shall be:

- (1) Initial provider approval - \$200.
- (2) Reinstatement of provider approval - \$100.
- (3) Biennial renewal of approval - \$100.
- (4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

- (a) ~~An applicant for licensure who is retaking the examination - forty (40) dollars.~~
- (b) Verification of temporary work permit, licensure, [or] registration, or credential status:
 1. If requested in individual nurse format - ten (10) dollars;
 2. If requested in list format - one (1) dollar per name with a minimum charge of ten (10) dollars. [letter:
 1. One (1) to five (5) verifications - ten (10) dollars;
 2. Six (6) to ten (10) verifications - twelve (12) dollars;
 3. Eleven (11) to fifteen (15) verifications - fourteen (14) dollars;
 4. Sixteen (16) to twenty (20) verifications - fifteen (15) dollars;
 5. Twenty-one (21) to fifty (50) verifications - twenty-five (25) dollars;
 6. Fifty-one (51) to 100 verifications - forty (40) dollars; and
 7. 100 or more verifications - fifty (50) dollars.]
 - (b) ~~[(c)]~~ Copy of an examination result or transcript - five (5) dollars.
 - (c) ~~[(d)]~~ Nursing certificate (optional) - thirty (30) dollars.
 - (2) An applicant for licensure who takes or retakes the licensure examination shall pay:
 - (a) The current examination fee required by the national council of

state boards of nursing; and

(b) Application for licensure ~~fee [and retake fees]~~ pursuant to Section 1 of this administrative regulation ~~[and subsections (1) and (4) of this section]~~.

(3) An applicant ~~[A nurse]~~ shall pay the current examination fee required by the national council of state boards of nursing, and the fees established by the board for application for licensure ~~[and retake]~~, if the nurse:

- (a) Is licensed in another state, United States territory, or country;
- (b) Submits an application for licensure in Kentucky as a registered nurse, or a licensed practical nurse; and
- (c) Is required to take ~~[or retake]~~ the licensure examination.
- (4) ~~[An applicant retaking the licensure examination shall submit:~~
- (a) ~~The fee for retake prior to each time the examination is taken;~~

~~and~~
(b) ~~A new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially.~~

(5) A graduate of a foreign school of nursing shall be responsible for:

- (a) Costs incurred to submit credentials translated into English;
- (b) ~~[Commission on graduates of foreign nursing schools certificates;~~
- (c) ~~[(d)]~~ Immigration documents; and
- (c) ~~[(d)]~~ Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. ~~[Except as provided by Section 3(4)(b) of this administrative regulation,]~~ An application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure, credential or registration shall be issued the appropriate approval, license, credential or registration without additional fee.

Section 6. Refunds. An overpayment of five (5) dollars or more of a current fee shall be refunded.

Section 7. A partial application fee may be held on record for one (1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. A fee properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

Section 9. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be fifty (50) dollars.

(2) The credential renewal fee shall be forty (40) dollars.

(3) The credential reinstatement fee shall be fifty (50) dollars.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Primarily exam applicants who have failed the exam & those requesting certain services. Number unknown.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The agency may see an increase in revenue depending on the number of failures. Amount unknown.

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: Board's general operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: 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: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1), 314.051(1), 314.111(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: It is necessary that standards be established to assure that programs of nursing prepare graduates for licensure as registered nurses or licensed practical nurses in organized settings where standards are met.

Section 1. Organization and Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligi-

ble for approval by the board, a program must have:

(1) A governing institution.

(a) The institution which establishes and conducts the program of nursing shall be accredited by the southern association of colleges and schools or the appropriate accrediting body.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing.

(c) The governing institution shall designate a nurse administrator, establish administrative policies, provide financial support, resources, and facilities for the operation of the program of nursing.

(d) The governing institution shall provide an organizational chart which describes the organization of the program of nursing and its relationship to the governing institution.

(2) Administrative policies.

(a) There shall be written administrative policies for the program which are in accord with those of the governing institution and available to the board for review.

(b) The board shall be notified in writing of a change in the appointment of the nurse administrator.

(c) A written plan for the orientation of the faculty to the governing institution and to the program or to the extension program shall be implemented.

(d) There shall be written contracts between the governing institution and other agencies or institutions that provide learning experiences for students. Contracts shall not be required for observational experiences or field trips.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and reviewed annually.

(3) A nurse administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities and the community.

(b) Participation in the preparation and administration of the program of nursing budget.

(c) Screening and recommendation of candidates for faculty appointment, retention, and promotion.

(d) Development of admission, retention and progression criteria.

(e) Development, implementation, and evaluation of the program of nursing.

(f) Development and implementation of program policies.

(g) Facilitation of continuing academic and professional development for the faculty.

(h) Development and negotiation of contracts with clinical facilities.

(i) Establishment of student/faculty ratio in the clinical practice experience. The criteria to determine the student/faculty ratio shall include:

1. Acuity level of the patient population.

2. Clinical preparation of faculty.

3. Behavioral objectives for students in clinical rotation.

4. Contract with clinical agency.

5. Physical setting for student experience.

6. Patient/client safety.

7. The student/faculty ratio (excluding observational experiences) shall not exceed a maximum of ten (10) to one (1) in the clinical practice experience.

(j) Submission of the "Certified List of Program of Nursing Graduates", as incorporated in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate.

(4) Provision for a system of records and reports essential to the operation of the program of nursing. The system shall include records of:

(a) Enrolled and previously enrolled students.

(b) Program meetings.

(c) Faculty members.

(d) Program development, proposals, recommendations, plans and evaluation.

(5) Official publications which include:

(a) Description of the governing institution and program of nursing.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(b) Policies on admission, progression, dismissal, graduation and student grievance procedures.

(c) Description of student services.

(6) Written personnel policies for the faculty which include:

(a) Position descriptions.

(b) Faculty rights and responsibilities.

(c) Faculty evaluation process.

(7) Clerical assistance. The number of clerical assistants shall be determined by the number of students and faculty. There shall be secretarial and clerical assistants to meet the needs of the program.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Nurse administrators at schools of nursing. Approximately 50.

(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: Board's general operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: 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: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)**

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

RELATES TO: KRS 314.041, 314.051, 314.071

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination or endorsement, "Application for Licensure";

(b) For RN Renewal, "RN Biennial Licensure Renewal Application";

(c) For LPN Renewal, "LPN Biennial Licensure Renewal Application";

(d) For RN or LPN reinstatement, "Application for Reinstatement";

(e) For RN or LPN change of status:

1. "Application for Change of Licensure Status (Inactive to Active)"; or

2. "Application for Change of Licensure Status (Active to Inactive)";

(f) For registration as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky";

(g) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application"; or

(h) For reinstatement as an advanced registered nurse practitioner, "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified [an official] copy of the [each] court record of each misdemeanor [and/] or felony conviction and [with] a letter of explanation that addresses each conviction;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Not have a disciplinary action pending by the board or an agreed order or decision presently in effect for a violation of KRS Chapter 314;

(6) Have paid all monies due to the board;

(7) Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;

(8) Submit additional information as required by the board in an

administrative regulation;

- (9) Meet the additional requirements for:
 - (a) Licensure by examination established by 201 KAR 20:070;
 - (b) Licensure by endorsement established by 201 KAR 20:110;
 - (c) Licensure by reinstatement established by 201 KAR 20:225;
 - (d) Licensure by renewal established by 201 KAR 20:230;
 - (e) Inactive licensure status established by 201 KAR 20:095; or
 - (f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056; ~~and~~
- (10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States; ~~and~~
- (11) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. ~~[Except as provided in 201 KAR 20:070, Section 1(2);]~~
If an application is not completed within one (1) year from the date the application form is filed:

- (1) The application filed with the board shall lapse; and
- (2) The application fee shall be forfeited.

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a felony shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the licensee:

- (a) Committed the felony within five (5) years of the date of filing the application; and
- (b) Was convicted of a felony under:
 1. One (1) of the following KRS Chapters:
 - a. KRS Chapter 189A (driving under the influence);
 - b. KRS Chapter 218A (controlled substances);
 - c. KRS Chapter 507 (criminal homicide);
 - d. KRS Chapter 508 (assault and related offenses);
 - e. KRS Chapter 509 (kidnapping and related offenses);
 - f. KRS Chapter 510 (sexual offenses);
 - g. KRS Chapter 511 (burglary and related offenses);
 - h. KRS Chapter 512 (criminal damage to property);
 - i. KRS Chapter 513 (arson and related offenses);
 - j. KRS Chapter 514 (theft and related offenses);
 - k. KRS Chapter 515 (robbery);
 - l. KRS Chapter 516 (forgery and related offenses);
 - m. KRS Chapter 521 (bribery and corrupt influences);
 - n. KRS Chapter 523 (perjury and related offenses);
 - o. KRS Chapter 525 (riot, disorderly conduct and related offenses);
 2. A comparable law in another jurisdiction.
- (2) A notice to deny licensure shall be issued to an applicant who has been convicted of a felony specified in subsection (1) of this section.

(3) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel to determine if the requirements of KRS 314.091 are met. The request shall be:

- (a) In writing; and
- (b) Postmarked within thirty (30) days of receipt of the notice.
- (4)(a) An applicant for licensure by examination or endorsement shall report a conviction for a crime that is:
 1. Specified in subsection (1) of this section for which the applicant was convicted prior to the time period specified in subsection (1) of this section; or
 2. Not specified in subsection (1) of this section.
- (b) The board shall review a conviction reported pursuant to paragraph (a) of this subsection on an individual basis to see if the requirements of KRS 314.091 are met.

Section 5. Incorporation by Reference. (1) The following items are incorporated by reference:

- (a) "Application for Licensure", 3/98, Kentucky Board of Nursing;
 - (b) "RN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;
 - (c) "LPN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;
 - (d) "Application for Reinstatement", 1/97, Kentucky Board of Nursing;
 - (e) "Application for Change of Licensure Status (Inactive to Active)", 3/97, Kentucky Board of Nursing;
 - (f) "Application for Change of Licensure Status (Active to Inactive)", 2/97, Kentucky Board of Nursing;
 - (g) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;
 - (h) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing; and
 - (i) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing.
- (2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Applicants for licensure. Number unknown.

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

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

enforcement of administrative regulation: Board's general operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: 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: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(4) authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation is necessary to specify requirements for issuing licenses and electronically reporting license sale data and license revenue; to detail the procedures for suspending or revoking license agent status, and to specify the methods for appealing a suspension or revocation of agent status. [This administrative regulation also repeals 301 KAR 3:025, which it replaces.]

Section 1. Issuing Licenses. (1) A license agent [license agents] shall not issue a license [licenses] to a person who does [persons who do] not provide the agent with:

(a) His [Their] date of birth; and

(b) An identification number, which shall be:

1. A driver's license number;

2. A state identification card number;

3. A Social Security number; or

4. The number from an identification form printed by the POS device; or

5. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from a disability authorization card issued to the person to whom the license is issued.

(2) A license agent [license agents] shall not issue:

(a) A junior hunting license [licenses] unless the parent or guardian of the license recipient signs the license at the time of purchase.

(b) A [(3) license agents shall not issue] Peabody or Cypress/AMAX-Robinson Forest user permit to a person who does not sign the liability waiver [permits to persons who do not sign the liability waivers] required by 301 KAR 4:100 or 301 KAR 4:200; or

(c) A senior/disabled license to:

1. A person age sixty-five (65) or over who does not provide proof of age and Kentucky residency; or

2. A person under the age of sixty-five (65) who does not show a disability authorization card issued to the person to whom the license is issued and a second item of personal identification.

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Forty (40) cents for each Peabody or Cypress/AMAX-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200.

(b) Twenty-five (25) cents each for other transactions.

(2) A license agent [agents] shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank account [accounts] required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent [license agents] shall:

(a) Connect his POS device [their POS devices] to a telephone line on the date of the scheduled upload;

(b) Leave the POS device connected to the telephone line until the upload has been completed;

(c) Retain the receipts printed with each transaction until after the information about that transaction has been successfully uploaded; and

(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when an electronic fund transfer [transfers] from his bank account will be initiated.

(2) At the close of banking hours on the day of the scheduled electronic fund transfer, a license agent [agents] shall have sufficient funds in his account [their accounts] to cover the amount of the transfer.

Section 5. Voiding Licenses. (1) A license agent [license agents] may void a license if:

(a) The license does not print correctly; or

(b) After the license is printed, the purchaser:

1. Discovers that he was issued an incorrect license;

2. Will not pay for the license; or

3. Otherwise refuses to accept the license.

(2) Agents shall retain voided licenses and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department.

(1) A license agent [license agents] shall retain:

(a) A voided license [Voided licenses];

(b) The completed identification form [forms] required by 301 KAR 5:030;

(c) The signed waiver of liability form [forms] required by 301 KAR 4:100 and 301 KAR 4:200;

(d) Ruined or unusable license stock; and

(e) Discarded printer ribbons.

(2) A license agent [license agents] shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license [licenses] not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license [licenses] returned later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year a license [an] agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. The agent agreement;

2. KRS 150.195; or

3. An [The] administrative regulation [regulations] adopted pursuant to KRS 150.195.

(2) The department may permanently revoke the agent status of a license [an] agent who:

(a) Commits for the second time an offense for which he has been

previously suspended;

(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing his agent bank account;

(d) Closes his business seasonally without notifying the department and settling his account;

(e) Knowingly issues a license containing false information; or

(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that his status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.

(4) A suspension or revocation [Suspensions or revocations] shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent [agents] shall:

(a) Surrender upon demand the POS devices and license stock in his [their] possession to an authorized agent of the department;

(b) Allow the department access to financial records dealing with license sales; and

(c) Immediately pay all funds owed to the department.

Section 8. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes [Agents who wish] to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(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) At the hearing, the license agent:

(a) May be represented by counsel; and

(b) May present evidence which he feels should be considered, including the calling of witnesses.

(5) The department may present evidence and call witnesses to support the suspension or revocation.

(6) The commission shall make its decision by majority vote.

(7) Agents may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.

(8) [Beginning July 15, 1996,] The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: August 13, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 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 attending this hearing shall notify this agency in writing by September 21, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 1250 license agents across the state will be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on 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: This regulation supports automation of a previously manual hunting and fishing license system. Elimination of the manual system greatly reduces paperwork for both the license agent and the department. There should be no change in cost factors for the agents or the department.

2. Second and subsequent years: There should be no changes other than the ones identified in the first year.

(3) Effects on the promulgating administrative body: More efficient operations, increased availability of licenses, better control over license sales, uniform agent selection process

(a) Direct and indirect costs or savings:

1. First year: Project was designed to equal costs under existing manual system.

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

3. Additional factors increasing or decreasing costs: None identified.

(b) Reporting and paperwork requirements: Reporting requirements will be automated under the new license system, greatly reducing paperwork.

(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: Department of Fish and Wildlife 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: some agents will have more types of licenses to sell, all agents will have increased availability to hunting and fishing licenses for their customers.

(b) Kentucky: Better service to hunters and anglers.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.195 changes the way licenses are distributed. As a result of this change, the department will deal directly with approximately 1250 agents rather than with only 120 county clerks. The alternative of remaining with a manual system is unacceptable because it would be ineffective, inefficient and labor-intensive.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used to the extent that license agents were placed in several categories with differing requirements. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

STATUTORY AUTHORITY: KRS [150.090;] 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) gives the department authority to promulgate administrative regulations pertaining to the issuance of licenses; 1998 RS HB 654 grants the department authority to require proof of residency and age or disability for those eligible to purchase a senior/disabled combination license. This administrative regulation is necessary to specify the information required to purchase a POS license, the information required on the license, [and] how replacement licenses may be obtained, and how to obtain a disability authorization card.

Section 1. Information Required to Purchase a POS License. A person buying a POS license shall furnish the license agent the following information:

(1) The license applicant's date of birth; and

(2) An identification number, which shall be [either]:

(a) An identification number generated by the POS device; [or]

(b) The license applicant's:

1. Driver's license number;

2. State identification card number; or

3. Social Security number; or

(c) If buying a senior/disabled license:

1. If age sixty-five (65) or over, proof of age and Kentucky residency; or

2. If under age sixty-five (65), a disability authorization card issued by the department and another form of personal identification.

(3) To purchase a license using an identification number from the POS device, a person shall provide the full name and complete mailing address of the license applicant to the license agent on an identification card generated by the POS device.

Section 2. Providing Information on Licenses. (1) Before performing an act authorized by the license, the license holder shall:

(a) Sign:

1. The POS license; and

2. Each tag portion of the deer or turkey permit.

(b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:

1. Address, including city, state and zip code;

2. Eye color;

3. Hair color;

4. Sex;

5. Height; and

6. Weight.

(2) Licenses not completed as specified in this section shall be invalid.

(3) A senior/disabled combination license shall not be valid unless accompanied by:

(a) Proof of age and Kentucky residency, if the license recipient is age sixty-five (65) or over; or

(b) A disability authorization card issued to the license recipient, if the license recipient is under age sixty-five (65).

Section 3. Replacement of Lost or Destroyed Licenses. (1) A person whose license is [Persons whose licenses are] lost or destroyed may:

(a) Request a replacement license from the department; or

(b) Purchase a replacement license and request a refund from the department.

(2) A person [Persons] requesting a replacement license or refund [licenses or refunds] shall provide the department with:

(a) His [Their] name and complete mailing address;

(b) The identification number used to purchase the original license; and either

1. A replacement fee of three (3) dollars; or

2. The license number of the license he [they] bought to replace the lost or destroyed license.

(3) If the department can verify the purchase of the original license, it shall:

(a) Void the original license; and, as appropriate,

(b) Issue a replacement license; or

(c) Issue a refund check for the amount of the license, less a three (3) dollar replacement fee.

(4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.

(5) The department shall not refund a license replacement fee [fees].

Section 4. Duplicate License Refunds. A person [Persons] may obtain refunds for a duplicate POS license [licenses]:

(1) From the license agent who completed the transaction, if:

(a) The request is made on the same day the license was issued; and

(b) The original license is surrendered to the license agent; or

(2) By furnishing the department with:

(a) The duplicate license;

(b) The name and mailing address of the person requesting the refund;

(c) The license number of the original license; and

(d) An explanation of the reason for the refund request.

(3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund.

Section 5. Buying Licenses for Another. A person purchasing a POS license for another person shall provide the license agent with the information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation.

Section 6. Obtaining a Disability Authorization Card. (1) To verify that he qualifies for a senior/disabled combination license because of a disability as specified in 1998 RS HB 654, a person shall provide the department:

(a) A letter of verification from his local federal Social Security office certifying that he has been declared totally and permanently disabled;

(b) A copy of his disability rating from the Veterans Administration showing at least a fifty (50) percent military service-connected disability;

(c) A letter of verification from the United States Railroad Retirement Board certifying that the applicant has been declared totally and permanently disabled; or

(d) A letter, on that state board's letterhead, certifying that the applicant has been declared totally and permanently disabled by another state's workers' compensation board.

(2) A person declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department; and

(b) Complete the form and mail it to the address given on the

form.

(3) Upon receipt of the verification required by subsection (1) of this section, the department shall issue a card certifying the person is eligible to purchase a senior/disabled combination license.

Section 7. Duration of Disability Exemption. Certification by the Social Security Administration, the United States Railroad Retirement Board, the Veterans Administration or a state worker's compensation board shall remain valid for three (3) years after issue of the disability authorization card.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Disability Authorization Card" (1998); and

(b) "Disability Authorization Card Instructions" (1998).

(2) This material may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: August 13, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 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 attending this hearing shall notify this agency in writing by September 21, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: The approximately one million persons who purchase hunting or fishing licenses and permits.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no direct or indirect impacts on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no direct or indirect impacts 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: There are no costs associated with paperwork requirements for this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will impose no additional costs or create additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: This administrative regulation requires that persons purchasing a license or permit from the department sign the license and provide personal information on the license. It also requires that persons who do not provide a driver's license or Social Security number shall complete a form before purchasing a license.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Game and Fish 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: This administrative regulation will be implemented statewide.

(b) Kentucky: No public comments received. This administrative regulation should have no economic impacts or affect economic activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation requires license buyers to provide information on the license. The alternative of having the license agent collect and key in this information was rejected because it would be too time consuming and would place an additional burden on the agent. Not requiring this information on the license was rejected because the absences of this information would make it difficult for law enforcement officers to identify license holders.

(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.

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

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

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(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.

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

401 KAR 63:021. Existing sources emitting toxic air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.01-400, 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation provides for the control of emissions of toxic air pollutants.

Section 1. A source in existence on the effective date of this administrative regulation which was issued a permit pursuant to 401 KAR 50:035 with conditions based on this administrative regulation or 401 KAR 63:022 shall continue to comply with all conditions based on this administrative regulation or 401 KAR 63:022 unless it can demonstrate that a condition is no longer necessary to protect human health and the environment. [Applicability. (1) The provisions of this administrative regulation shall apply to each affected facility commenced before the effective date of this administrative regulation which emits toxic air pollutants as defined in Section 2 of this administrative regulation.

(2) The provisions of this administrative regulation shall not apply to the following:

(a) Emissions which are regulated under Title 401, Chapter 57, or 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants);

(b) Laboratory equipment used for chemical or physical analysis or experimentation;

(c) Dry cleaning facilities;

(d) Sources which emit less than the significant levels specified in Appendix B, adjusted for height of release and hours of operation per week pursuant to Appendix C to this administrative regulation;

(e) Indirect heat exchangers using fossil fuel, except for indirect heat exchangers which burn waste material containing toxic substances;

(f) Gasoline dispensing facilities other than gasoline bulk plants and terminals;

(g) Agricultural operations.

Section 2. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010:

(1) "Toxic air pollutant" means a substance which is listed in Appendix B of this administrative regulation;

(2) "Affected facility" means an apparatus, building, operation or other entity or series of entities which emits or may emit any toxic air pollutant into the outdoor atmosphere;

(3) "Threshold ambient limit (TAL)" means the concentration level in the ambient air of a toxic air pollutant, calculated pursuant to Appendix B to this administrative regulation;

(4) "Reasonably available control technology" means the lowest emission limit that a particular affected facility is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

Section 3. Control of Toxic Air Pollutants. (1) Except as provided in subsection (2) of this section, no owner or operator shall allow any source to exceed the allowable emission limit determined by the formula specified in Appendix A to this administrative regulation.

(2) Where a threshold ambient limit for a toxic air pollutant is not specified in Appendix B to this administrative regulation, or where the owner or operator can demonstrate to the satisfaction of the cabinet that the allowable emission limit referenced in subsection (1) of this section cannot be met even after the application of reasonably available control technology, then reasonably available control technology shall be required.

(3) As used in this administrative regulation, allowable emission limit is applicable to each toxic air pollutant and applied to the source as a whole. The provisions of 401 KAR 50:042 shall not apply when determining an allowable emission limit of a toxic air pollutant.

(4) The maximum ground level concentration as applied in Appendix A is determined for the affected facility, or a series of affected facilities within the source, through the application of an approved dispersion model specified in "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015. For the purpose of this administrative regulation, no additive effect or interaction among sources is presumed in determining maximum ground level concentration.

(5) Demonstration of compliance with emission limits may be made through calculations. Continued compliance shall be demonstrated through production and throughput records, maintenance schedules and operating practices, and/or as specified as a permit condition.

(6) The cabinet may upon request assist the owner or operator in determining the applicable emission limits for the source. The cabinet

shall charge no fee for this service, except as required in 401 KAR 50:036.

Section 4. Public Participation. Except for fertilizer dispensing facilities, the cabinet shall notify the public through prominent advertisement in a newspaper of general circulation in the region in which the source is located, of the cabinet's intention to accept a compliance schedule or demonstration of reasonably available control technology as a part of an operating permit issued pursuant to this administrative regulation. The cabinet shall afford the public the opportunity to submit written comments on the cabinet's intended action within thirty (30) days following the publication of said advertisement. The cabinet shall consider these comments in its decision to issue the operating permit.

Section 5. Compliance Timetable. (1) The owner or operator of an affected facility which constructed or received a permit to construct or operate before the effective date of this administrative regulation shall within twelve (12) months following the effective date of this administrative regulation submit either:

(a) A permit application to operate the source which ensures compliance with the provisions of this administrative regulation; or

(b) A permit application to operate the source with a compliance schedule that will enable the source to achieve compliance with the provisions of this administrative regulation as expeditiously as possible but not later than two and a half (2 1/2) years following the effective date of this administrative regulation;

(2) A compliance schedule identified in subsection (1)(b) of this section shall contain the following elements:

(a) A commitment for submission of a control plan for achieving compliance with this administrative regulation. Submission of control plan shall not be more than six (6) months following the submission date of the compliance schedule;

(b) The date by which the control system installation contract will be awarded;

(c) The date by which construction or installation of the emission control equipment or implementation of control measures will be initiated;

(d) The date by which on-site construction or installation of emission control equipment or implementation of control measures will be completed;

(e) The date by which final compliance will be demonstrated and which is within sixty (60) days following completion of installation of the control system or implementation of the control measures;

(3) The cabinet shall issue an operating permit contingent upon an acceptable compliance schedule.

(4) Requests for extension of the timetable presented in this section may be made to the director in writing. Extensions may be granted upon the demonstration to the cabinet's satisfaction that strict compliance with the timetable is unattainable for reasons beyond the reasonable control of the source.

Section 6. Failure of the owner or operator to comply with the provisions of this administrative regulation may result in the denial or revocation of an operating permit for the noncomplying affected facility.

APPENDIX A TO 401 KAR 63:021 Allowable Emission Limit

The following equation shall be used to determine the allowable emission limit for a toxic air pollutant:

$$E_{\text{Allowable}} = E_{\text{Actual}} \times \frac{TAL}{C}$$

Where:

$E_{\text{Allowable}}$ = Allowable emission limit in pounds per hour, expressed as an average for a time averaging period corresponding to the TAL time average;

E_{Actual} = Actual emission rate in pounds per hour.

VOLUME 25, NUMBER 3 - SEPTEMBER 1, 1998

TAL = Threshold ambient limit determined using the formula in Appendix B to this administrative regulation.

C = Maximum ground-level concentration in the ambient air estimated through the use of a dispersion model specified in the "Guideline on Air Quality Models."

APPENDIX B TO 401 KAR 63:021

Threshold Ambient Limits and Significant Emission Levels of Toxic Air Pollutants

Substance	Y*	Average Time	Significant Levels (M)** lbs. per hr.
1,1,1-Trichloroethane (methyl chloroform)	7600.00	8-hour	4.848E-01
1,1,2-Trichloroethane	180.00	8-hour	1.148E-02
1,3-Butadiene	88.00	8-hour	5.613E-03
4,4'-Methylenebis (2-Chloroaniline) (MOGA)	RACT		5.613E-05
Acetaldehyde	720.00	8-hour	4.593E-02
Acetic acid	100.00	8-hour	6.379E-03
Acetone	7120.00	8-hour	4.542E-01
Acrolein	1.00	8-hour	6.379E-05
Acrylic acid	120.00	8-hour	7.655E-03
Acrylonitrile	RACT		1.148E-03
Allyl chloride	12.00	8-hour	7.654E-04
Ammonia	72.00	8-hour	4.593E-03
Ammonium Chloride	40.00	8-hour	2.551E-03
Antimony and compounds, as Sb	2.00	8-hour	1.276E-04
Arsenic and arsenic compounds	RACT		5.103E-05
Barium, soluble compounds, as Ba	2.00	8-hour	1.276E-04
Benzene	RACT		7.654E-03
Benzo(a)anthracene	RACT		5.100E-07
Benzo(a)pyrene	RACT		5.100E-07
Cadmium	RACT		1.276E-05
Calcium hydroxide	20.00	8-hour	1.276E-03
Carbon disulfide	120.00	8-hour	7.655E-03
Carbon tetrachloride	RACT		7.654E-03
Chlorine	12.00	8-hour	7.654E-04
Chlorine dioxide	1.20	8-hour	7.654E-05
Chloroform	RACT		1.276E-02
Chlorophenols	RACT		5.100E-07
Chromium-VI	RACT		1.276E-05
Cumene	980.00	8-hour	6.251E-02
Cyanides, as CN	20.00	8-hour	1.276E-03
Diacetone alcohol	960.00	8-hour	6.124E-02
Dimethylamine	72.00	8-hour	4.593E-03
Dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin)	RACT		5.100E-07
Ethyl benzene	1740.00	8-hour	1.110E-01
Ethylene dibromide	RACT		5.100E-07
Ethylene dichloride (EDC)	RACT		1.021E-02
Ethylene oxide	RACT		5.103E-04
Formaldehyde	RACT		3.827E-04
Formic acid	36.00	8-hour	2.296E-03
Hexylene glycol	500.00	1-hour	2.240E-02
Hydrogen bromide	40.00	8-hour	2.551E-03
Hydrogen chloride	28.00	1-hour	1.254E-03
Maleic anhydride	4.00	8-hour	2.551E-04
Manganese dust and compounds as Mn	20.00	1-hour	8.959E-04
Manganese fume, as Mn	4.00	8-hour	2.551E-04
Mercury, alkyl compounds, as Hg	0.04	8-hour	2.551E-06

Mercury, as Hg; All forms except alkyl vapor	0.20	8-hour	1.276E-05
Mercury, as Hg; Aryl and inorganic compounds	0.40	8-hour	2.551E-05
Methanol	1040.00	8-hour	6.634E-02
Methyl bromide	80.00	8-hour	5.103E-03
Methyl chloride	420.00	8-hour	2.679E-02
Methyl ethyl ketone	2360.00	8-hour	1.505E-01
Methylamine	48.00	8-hour	3.062E-03
Methylene bisphenyl isocyanate (MDI)	0.80	1-hour	3.583E-05
Methylene chloride (Dichloromethane)	1400.00	8-hour	8.930E-02
Nickel carbonate	RACT		2.551E-05
Nickel carbonyl	RACT		8.930E-05
Nickel metal	RACT		2.551E-04
Nickel oxide	RACT		2.551E-05
Nickel subsulfide	RACT		2.551E-04
Nickel, soluble compounds, as Ni	RACT		2.551E-05
Nitric acid	20.00	8-hour	1.276E-03
Nonane	4200.00	8-hour	2.679E-01
n-Butanol	600.00	1-hour	2.688E-02
n-Hexane	720.00	8-hour	4.593E-02
Pentachlorophenol	2.00	8-hour	1.276E-04
Perchloroethylene	1340.00	8-hour	8.548E-02
Phenol	76.00	8-hour	4.848E-03
Phosphoric acid	4.00	8-hour	2.551E-04
Potassium hydroxide	8.00	1-hour	3.583E-04
Propargyl alcohol	8.00	8-hour	5.103E-04
Propylene dichloride	1400.00	8-hour	8.930E-02
Propylene oxide	200.00	8-hour	1.276E-02
Selenium compounds, as Se	0.80	8-hour	5.103E-05
Silver, metal	0.40	8-hour	2.551E-05
Silver, soluble compounds, as Ag	0.04	8-hour	2.551E-06
Sodium hydroxide	8.00	1-hour	3.583E-04
Styrene, monomer	860.00	8-hour	5.486E-02
Sulfuric acid	4.00	8-hour	2.551E-04
Tetrahydrofuran	2360.00	8-hour	1.505E-01
Tetrasodium pyrophosphate	20.00	8-hour	1.276E-03
Tin, organic compound, as Sn	0.40	8-hour	2.551E-05
Tin, oxide, metal and inorganic compounds except SnH4, as Sn	8.00	8-hour	5.103E-04
Titanium dioxide	20.00	8-hour	1.276E-03
Toluene	1500.00	8-hour	9.568E-02
Toluene 2,4-Diisocyanate (TDI)	0.16	8-hour	1.021E-05
Trichloroethylene	1080.00	8-hour	6.889E-02
Trimethylamine	96.00	8-hour	6.124E-03
Vinyl acetate	120.00	8-hour	7.654E-03
Xylene (o-, m-, p-isomers)	1740.00	8-hour	1.110E-01
Zinc chloride fume	4.00	8-hour	2.551E-04
Zinc oxide fume	20.00	8-hour	1.276E-03

$$* \text{Threshold Ambient Limit, TAL, mg/m}^3 = \frac{Y}{T}$$

where T = Hours of emission of the substance per week from the source, except that T = 40 if the hours per week of emission are less than 40.

**The Significant Levels (M) may be adjusted for the height of release, H, and hours of emission, T, using the procedures in Appendix C.

APPENDIX C TO 401 KAR 63:021 Correction Factors for Height of Release and Hours of Emission

Minimum

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Height of Release (H) (meters)	Height of Release (H) (feet)	Height of Release Correction Factor (K)
1	3.3	1
2	6.6	4
3	9.9	12
4	13.1	24
5	16.4	41
6	19.7	62
7	23.0	89
8	26.2	121
9	29.5	159
10	32.8	204
15	49.2	489
20	65.6	901
25	82.0	1429
30	98.4	2037
35	114.8	2738
40	131.2	3535
45	147.6	4418
50	164.0	5394
55	180.4	6495
60	196.9	7484
65	213.3	8622

The Significant Level (L) in Section 1(2)(d) shall be calculated from the formula:

$$L = M \times K \times \frac{168}{T}$$

Where:

L = Adjusted significant level (lbs/hr).

M = Significant level (lbs/hr) for the substance as listed in Appendix B.

K = Height of release correction factor from the table above. H is the minimum height of release of the substance from the source. When H is between two (2) values, the lower number shall be used.

T = Hours of emission of the substance per week from the source, except that T = 40 if the hours per week of emission are less than 40.]

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 12, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 29, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: Carl Millanti, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Carl Millanti

(1) Type and number of entities affected: The amendments to this administrative regulation repeal the provisions for existing

sources of toxic air pollutants. Any existing source of toxic air pollutants which was issued a permit pursuant to 401 KAR 63:021 or 401 KAR 63:022 shall continue to comply with all the provisions of that permit unless it can demonstrate that a condition is no longer necessary to protect human health and the environment.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings in any geographical area of the Commonwealth as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation will not affect the cost of doing business in any geographical area of the Commonwealth.

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

1. First year following implementation: This administrative regulation will not result in any increased costs for any entity. A source which can successfully demonstrate that an existing permit condition is no longer necessary to protect human health and the environment would realize a savings based on the costs which are associated with implementing, maintaining, and monitoring a particular condition.

2. Second and subsequent years: Any savings realized by discontinuing a permit condition would continue into the future.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of its normal day-to-day operations. The costs associated with reviewing a request to discontinue an existing permit condition would be absorbed as a part of the agency's operating budget. Similarly, the approval or denial of such a request would not result in a direct or indirect cost or saving.

2. Continuing costs or savings: There are no direct agency costs or saving associated with this administrative regulation. Indirectly, a resource savings will be realized in those instances when a request to remove a condition is approved. These resources can then be redirected to other projects.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This administrative regulation will not affect agency reporting requirements. Paperwork requirements will increase slightly based on the number of requests to remove permit conditions which are submitted by existing sources.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The cabinet has determined that the unamended administrative regulation is substantially ineffective and that the redirection of agency and industry resources would better benefit human health and the environment.

(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 will allow the agency and industry resources which are currently being expended on an ineffective program to be redirected to other problems affecting the air quality in Kentucky.

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

if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented, agency and industry resources will continue to be expended on an ineffective program instead of being redirected to other programs which have a positive effect on human health and the environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation in order to amend an existing administrative regulation which it currently must enforce that is not benefiting human health and the environment.

(11) TIERING: Is tiering applied? No. Tiering is not applied to this administrative regulation because no disproportionate impacts exist.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.01-400.

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE CABINET Kentucky Parole Board (Amendment)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340(3)

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340 requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This ad-

ministrative regulation establishes the criteria for determining parole eligibility.

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

(1) "Board" means the Kentucky Parole Board.

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

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

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

(5) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;

(b) Answer the detainer.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan pursuant to KRS 439.340(2) and has signed his parole certificate.

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

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

(9) "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

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

(11) "Restitution" is defined in 1998 Ky. Acts ch. 606, sec. 177.

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

(13) [(+2)] "Youthful offender" is defined in KRS 635.020(2) to (8).

Section 2. Ineligibility. (1) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(2) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to 1998 Ky. Acts ch. 606, sec. 25 and 70, shall not be eligible for parole consideration.

Section 3. Parole Eligibility. (1) Initial parole review date.

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

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

For any crime committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony, where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	85% of sentence received
Sentences of life	20 years

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(b) For the crimes, committed on or after July 15, 1986, but prior to July 15, 1998, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping -where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A or Class B felony which involves serious physical injury or death of the victim:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentences of life	12 years

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

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 99 years	20% of sentence received
More than 99 years, up to and including life	8 years]

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

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

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under paragraph (b) of this subsection or this paragraph and one (1) or more committed under paragraph (a) of this subsection, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

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

(e)1. If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration and he has not been discharged since his original admission and, if this new conviction shall be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

2. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing.

3. If a confined prisoner receives an additional concurrent or consecutive sentence after he has been considered by the board, but not yet released if parole is recommended, the previous action of the board shall be automatically voided and the new parole eligibility shall be calculated from the date of original admission on the aggregate sentences.

(f) If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. The amount of time to be served for parole eligibility on the additional sentence for the escape;

3. The amount of time to be served for parole eligibility on the time to be served for the crime committed while in the institution and escape; and

4. The amount of time to be served for parole eligibility on the time to be served for the crime committed while on escape.

(h) If a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date. If the prisoner later receives a sentence for the escape the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence.

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

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

(k) If a person is shock probated, or on prerelease probation, and later returned as a shock probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(l) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

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

(a) Successfully completed the First Incarceration Shock Treat-

ment (FIST) Program implemented by CPP 21.2, V. Policy, B. Eligibility Criteria, incorporated by reference, in 501 KAR 6:020; and

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

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

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

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

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

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

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

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

Section 4. [3-] Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

- (a) Current offense - seriousness, violence involved, firearm used;
- (b) Prior record;
- (c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;
- (d) Attitude toward authority - before and during incarceration;
- (e) History of alcohol or drug involvement;
- (f) History of prior probation, shock probation or parole violations;
- (g) Education and job skills;
- (h) Employment history;
- (i) Emotional stability;
- (j) Mental capacities;
- (k) Terminal illness;
- (l) History of deviant behavior;
- (m) Official and community attitudes toward accepting inmate back in the county of conviction;
- (n) Victim impact statement and victim impact hearing;
- (o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;
- (p) Other factors involved that relate to the inmate's needs and public safety.

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

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

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

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

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

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

Section 5. [4-] Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

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

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

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

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

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

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

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

Section 6. [5-] Conditions of Parole. (1) The parolee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Pay the balance of the restitution ordered pursuant to 1998 Ky. Acts ch. 606, sec. 47.

(o) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

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

(a) Pay restitution;

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

(c) [(b)] Observe a curfew;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- (d) [(e)] Not associate with, or contact a specific individual;
- (e) [(d)] Not frequent a certain place or business;
- (f) [(e)] Be tested periodically for drugs; or
- (g) [(f)] Observe any condition the board has determined is necessary for the rehabilitation of the parolee.

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 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: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601, Telephone Number 502-564-3279, Facsimile Number 502-564-5244.

REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones

- (1) Type and number of entities affected: 8,729 inmates and 14,211 parolees and probationers.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - 1. First year following implementation: None
 - 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year: None
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: Policy revisions.
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: N/A
 - (9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Kentucky Parole Board
(Amendment)

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. [KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This administrative regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this administrative regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society. All matters relating to the granting of a final discharge from parole shall be conducted in the following manner.]

Section 1. When an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board. [A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole, assuming clear conduct from the date of parole release.]

Section 2. For any offender paroled on or after July 15, 1998, he shall not automatically receive a final discharge upon reaching the maximum expiration of his sentence from parole if he owes restitution. When a parolee who has reached his maximum expiration date pays his restitution in full, the board shall then issue a final discharge. Verification of payment shall be obtained from the parole officer. [Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chair may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.]

Section 3. A person subject to the provisions of 1998 Ky. Acts ch. 606, secs. 25 and 70, shall not receive a final discharge until the board receives verification of the expiration of the conditional discharge period. [When a parolee reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.]

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

regulation shall be held on September 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 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: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601, Telephone Number 502-564-3279, Facsimile Number 502-564-5244.

REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones

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

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process"

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

JUSTICE CABINET Kentucky Department of Corrections (Amended)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, July 13 (January-8), 1998":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media [(Amended 1/8/98)]
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen (Amended 7/13/98)
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law (Amended 7/13/98)
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution (Amended 7/13/98)
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services (Amended 7/13/98)
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program (Amended 7/13/98)
- 13.9 Dental Services (Amended 7/13/98)
- 13.11 Sex Offender Registration (Added 7/13/98)
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

14.4	Legal Services Program	27-06-02	Equal Access to Services
14.6	Inmate Grievance Procedures (<u>Amended 7/13/98</u>)	27-07-01	Cooperation with Law Enforcement Agencies
	[Amended 1/8/98]	27-08-01	Use of Force
15.1	Hair and Grooming Standards	27-09-01	Kentucky Community Resources Directory
15.2	Offenses and Penalties [Amended 1/8/98]	27-10-01	<u>Pretrial Diversion (Added 7/13/98)</u>
15.3	Meritorious Good Time (<u>Amended 7/13/98</u>)	27-11-01	Intensive Supervision [Amended 1/8/98]
15-05-01	Restoration of Forfeited Good Time	27-11-02	<u>Prerelease Probation (Amended 7/13/98)</u>
15.6	Adjustment Procedures and Programs [Amended 1/8/98]	27-12-01	Supervision: Case Classification
15.7	Inmate Account Restriction	27-12-02	Risk Assessment
15.8	Unauthorized Substance Abuse Testing (<u>Amended 7/13/98</u>)	27-12-03	Initial Interview
		27-12-04	Conditions of Regular Supervision/Request for Modification
16.1	Inmate Visits (<u>Amended 7/13/98</u>)	27-12-05	Releasee's Report
16.2	Inmate Correspondence	27-12-06	Grievance Procedures for Offenders
16.3	Telephone Calls [Amended 1/8/98]	27-12-07	Employment, Education/Vocational Referral
16.4	Inmate Packages	27-12-08	Supervision Plan
17.1	Inmate Personal Property [Amended 1/8/98]	27-12-09	Casebook
17.2	Assessment Center Operations	27-12-10	Guidelines for Monitoring Supervision Fee
17.3	Controlled Intake of Inmates	27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority (<u>Amended 7/13/98</u>)
(b) "Department of Corrections Policies and Procedures, Volume II, July 13 [January-8], 1998":		27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
18.1	Classification of the Inmate	27-12-13	Community Service Work
18.5	Custody and Security Guidelines (<u>Amended 7/13/98</u>)	27-12-14	Client Travel Restrictions
18.7	Transfers	27-13-01	Drug and Alcohol Testing of Offenders (<u>Amended 7/13/98</u>)
18.9	Out-of-state Transfers	27-13-02	Alcohol Detection
18-10-01	Preparole Progress Reports	27-14-01	Interstate Compact Transfers
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures	27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill	27-15-01	Supervision Report; Violations, Unusual Incidents
18.13	Population Categories	27-15-02	<u>Community Confinement Program Subject: Electronic Monitoring (Amended 7/13/98)</u>
18.15	Protective Custody	27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
18.17	Interstate Agreement on Transfers	27-17-01	Absconder Procedures
18.18	International Transfer of Inmates	27-18-01	Probation and Parole Issuance of Detainer/Warrant
19.1	Government Services Projects	27-19-01	Preliminary Revocation Hearing
19.2	Community Services Projects	27-20-01	Division of Probation and Parole Controlled Intake Program
19.3	Inmate Wage Program		
20.1	Educational Programs and Educational Good Time	27-20-02	Prisoner Intake Notification (<u>Amended 7/13/98</u>)
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)	27-20-03	Prisoner Status Change
21.2	Phase I: Program Selection Assessment Criteria [Amended 1/8/98]	27-21-01	Apprehension and Transportation of Probation and Parole Violators (<u>Amended 7/13/98</u>)
21.3	Program Schedule - Phase II and Phase III	27-22-01	Fugitive Unit - Apprehensions
21.4	Platoon Size and Composition	27-22-02	Fugitive Unit - Transportation of Fugitives
21.5	Physical Conditions Program Component	27-23-01	In-state Transfer
21.6	Group and Individual Counseling	27-24-01	Closing Supervision Report
21.7	Drug and Alcohol Abuse Counseling and Treatment	27-24-02	Reinstatement of Clients to Active Supervision
21.8	Work Programs Component	27-25-01	Application for Final Discharge from Parole (<u>Amended 7/13/98</u>)
21.9	Education and Life Management		
21.10	Auxiliary Services	27-26-01	Assistance to Former Clients and Dischargees
21.11	Offenses and Penalties	27-27-01	Restoration of Civil Rights
22.1	Privilege Trips	27-28-01	Firearms/Explosives: Application for Relief from Disability
23.1	<u>Religious Programs (Amended 7/13/98) (Religion)</u>	27-29-01	Parole Review Dates Modification
25.1	Gratuities	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
25.2	Public Official Notification of Release of an Inmate		
25.3	Prerelease Program	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
25.4	Inmate Furloughs	28-01-03	<u>Presentence, Postsentence, Supplemental and Partial Investigations (Amended 7/13/98) (Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure))</u>
25.6	Community Center Program [Amended 1/8/98]		
25.7	Expedient Release		
25.8	Extended Furloughs		
25.10	Administrative Release of Inmates		
25.11	Victim Notification	28-01-04	<u>Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules) (Deleted 7/13/98)</u>
(c) "Department of Corrections Policies and Procedures, Volume III, July 13 [January-8], 1998":		28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit) (Deleted 7/13/98)
27-01-01	Probation and Parole Procedures	28-01-06	Probation and Parole Investigation Reports (Misdemeanor Presentence Investigation Reports for the Circuit and District Courts) (Deleted 7/13/98)
27-02-01	Duties of Probation and Parole Officers		
27-03-01	Workload Formula Supervisor/Staff Ratio		
27-05-01	Testimony, Court Demeanor and Availability of Legal Services	28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule) (Deleted 7/13/98)]
27-06-01	Availability of Supervision Services		

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

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

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

- (1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: Policy revisions.
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.
 - (6) Economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:

- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:060. Definitions.

RELATES TO: KRS 15.330

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330

authorizes the Kentucky Law Enforcement Council to prescribe standards for schools conducting law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992, and to approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and 15.990 to 15.992. [by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund.] This administrative regulation provides definitions of certain terms used in 503 KAR Chapter 1, which pertain [pertains] to council regulation of such training and certification. [This administrative regulation also repeals the administrative regulations previously in this chapter.]

Section 1. Definitions. The following definitions shall apply in this chapter:

- (1) "Secretary" means the Secretary of the Kentucky Justice Cabinet.
- (2) "Department" means the Department of Criminal Justice Training (DOCJT) of the Kentucky Justice Cabinet.
- (3) "Council" means the Kentucky Law Enforcement Council (KLEC) as established in KRS 15.315.
- (4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.
- (5) "Fund administrator" means the person responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.
- (6) "Approval" means the act of the council in deciding that requirements have been met. KRS 15.330(1)(a) and (b) authorize the council to "approve" the adequacy of schools, and of instructors at such schools, that provide courses for gaining or retaining eligibility to participate in the fund. KRS 15.330(1)(e) authorizes the council to "approve" persons as having met training requirements.
- (7) "Certification" means "approval" of the council plus the issuing of a certificate as evidence of council approval. KRS 15.330(1)(d) authorizes the council to "certify" schools and instructors as meeting requirements for conducting courses for gaining or retaining eligibility to participate in the fund.
- (8) "Certified school" means a school which the council has been approved by the council to conduct courses required to gain or retain eligibility to participate in the fund and which has been issued a certificate as evidence of the council's approval.
- (9) "Recognized school" means a school which the council has not certified (e.g., the school is out-of-state), but which the council

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

considers to provide training at least equal to the equivalent training offered by the department.

(10) "Certified instructor" means a person who has been approved by the council to instruct at certified schools and to whom the council has issued a certificate as evidence of its approval.

(11) "Trainee" means a person participating in training as a student.

JOHN THORPE, Chair

DENNIS G. MILLS, Executive Director

STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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: Stephanie C. Bingham, Attorney, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone (606) 622-5897, Facsimile (606) 622-2740.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie c. Bingham

(1) Type and number of entities affected: All law enforcement officers, agencies and schools in the Commonwealth.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (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 is the funds budgeted for this 1998 - 1999 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public

health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: 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. 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.

JUSTICE CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a), (d)

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992. [by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund.] KRS 15.330(1)(d) authorizes the council to issue certificates to such schools. This administrative regulation prescribes standards and procedures for such approval and certification [for certifying such approval].

Section 1. Application Procedures. Any agency, group or individual may make application to the council to establish a certified basic training school, a certified in-service training school, or both. All applications shall be made in writing and shall set forth detailed facts as prescribed by the council and shall include, but not be limited to: the curriculum, the instructors, the facilities, and the equipment. [The school certification application form, KLEC Form 3, is available from and should be submitted to, the Kentucky Law Enforcement Council, [Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601-].]

Section 2. Review of Application. Upon receiving a properly completed application for certification of a school, the council shall conduct an on-site inspection of the facility and equipment and shall thoroughly examine the curriculum and instructors of the applying school. The council shall in the course of its inspection determine whether the applying school offers training at least equal to the equivalent training provided by the department. The council shall also determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality. Applying schools which have been found to be deficient in any area shall not be certified.

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. Within thirty (30) days of the council's vote, the council shall notify in writing the applying school and the fund administrator whether the applying school was approved. If an applying school has been approved, the council shall issue a certificate stating that the applying school has been certified and the type of training course(s) that shall be offered, basic or in-service or both.

Section 5. Inspections. Any school certified by the council shall be subject to inspection by the council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. A school's certification shall be revoked by the council whenever a school has been found not to have maintained the standards required for certification. If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council within fifteen (15) days. The council shall recertify a school only when the council has determined that all deficiencies have been corrected.

JOHN THORPE, Chair
DENNIS G. MILLS, Executive Director
STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m., in room 205, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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: Stephanie C. Bingham, Attorney, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone (606) 622-5897, Facsimile (606) 622-2740.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie c. Bingham

(1) Type and number of entities affected: all law enforcement schools in the Commonwealth.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (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 is the funds budgeted for this 1998 - 1999 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: 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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET (Amendment)

600 KAR 5:010. Transportation of nonpublic school students.

RELATES TO: KRS 158.115, 1998 GA HB 321 Part I, P. 87d [1996 Ky. Acts ch. 380, Part I, 0-87-d]

STATUTORY AUTHORITY: 1998 GA HB 321 Part I, P. 87d [1996 Ky. Acts ch. 380, Part I, 0-87-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Commonwealth's Biennium Budget for several bienniums has included funds [fiscal years 1996-98 included \$2 million] in the Transportation Cabinet's public transportation budget each year for the transportation of nonpublic school students. This administrative regulation establishes conditions and procedures for the reimbursement to fiscal courts of financial support for the transportation of nonpublic school students.

Section 1. Application for Funds. (1) A fiscal court that provided financial support for the transportation of nonpublic school students in a school year [1996-97 or 1997-98] pursuant to the provisions of KRS 158.115 may apply to the Transportation Cabinet for reimbursement of that financial support.

(2) By May 1 of a school year for which a fiscal court has authorized the expenditure of county funds pursuant to KRS 158.115 [1997 for school year 1996-97 and May 1, 1998 for school year 1997-98], the fiscal court shall in writing notify the Transportation Cabinet, Office of the Secretary of its intention to apply for reimbursement. The notification shall include:

(a) The name of the person in the county who will serve as liaison on the application;

(b) A resolution from the fiscal court stating that the county provided funds in the school year for the transportation of nonpublic school students;

(c) A detailed statement of the method by which the funds were made available for the transportation of the nonpublic school students;

(d) 1. A copy of each contract the fiscal court entered into to provide the transportation services; or
2. If the fiscal court does not contract for the provision of transportation services with a bus company or a board of education, a copy of the legal notice requesting applications for supplementary funds from providers of transportation of nonpublic school students; and

(e) An estimate of the total amount of funds to be provided.

(3) The final application to the Transportation Cabinet shall:

(a) Be received by the Office of the Secretary not later than June 30 of the applicable school year;

(b) Include the amount of funds provided by the county for the transportation of nonpublic school students; and

(c) Proof of payment of the amount requested for reimbursement; and

(d) A copy of each application or invoice for payment and the

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

supporting documentation from the transportation provider.

(4)(a) The Transportation Cabinet shall:

1. Evaluate the applications received for compliance with the requirements established by this section; and

2. Divide the funds [\$2-million] available in each fiscal year between applicants who comply with the requirements established by this section as provided by paragraphs (b) and (c) of this subsection

(b) If the application amounts spent by the counties equal or total less than the amount appropriated by the General Assembly for that school year, the Transportation Cabinet shall authorize payment for each requested reimbursement amount.

(c) If the application amounts spent by the counties exceed the amount appropriated by the General Assembly, the Transportation Cabinet shall prorate the amount appropriated by the General Assembly among the applicants as provided by Section 2 of this administrative regulation.

Section 2. Proration of Appropriated Funds. Funds required to be prorated pursuant to Section 1(4)(b) of this administrative regulation shall be prorated as provided by this section.

(1) From the latest figures from the Department of Education available at the time applications are reviewed, the cabinet shall determine:

(a) The total of the number of public school students transported and the number of nonpublic school students who would be eligible for transportation. The number of nonpublic school students shall not include those students who:

1. Attend schools on military reservations or which are fully federally funded; or

2. Are taught at home.

(b) The statewide average for the annual cost of the transportation of individual student.

(c) The amount of local funds expended or budgeted for the transportation of nonpublic school students.

(2) The maximum a county shall be eligible to apply for shall be the lesser of the following:

(a) The product of the total students established pursuant to subsection (1)(a) of this section times the value established pursuant to subsection (1)(b) of this section; or

(b) The funds actually expended by the county for the transportation of nonpublic school students during the applicable school year.

(3) If it is necessary to prorate the appropriation for a specific fiscal year, the funds for each eligible, applicant county shall be the product of the funds appropriated by the General Assembly for that school year [\$2,000,000] times the application amount for the county established by subsection (2) of this section divided by the total amount of the eligible applications received for all counties pursuant to subsection (2) of this section.

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 28, 1998 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 29, 1998 at 10:30 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 22, 1998 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 22, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on September 29, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant,

Transportation Cabinet, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502)564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: 120 county fiscal courts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing not held, but no anticipated effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing not held, but no anticipated effect.

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

1. First year following implementation: Minimal administrative cost of passing resolution by the eligible counties, supplying the Transportation Cabinet with copies of contracts, resolutions, and proof of payments made.

2. Second and subsequent years: Second year only is the same as the first year. There is no subsequent year funding.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The minimal administrative cost of evaluating the applications from the fiscal courts and issuing the reimbursement checks. The \$2.5 million each year of the biennium was included in the Executive Budget and is available for this purpose only.

1. First year: \$2.5 million from special account plus administrative costs.

2. Continuing costs or savings: Same for the second year. There are no continuing costs after the second year unless there is a continuing legal challenge to the administrative regulation.

3. Additional factors increasing or decreasing costs: If there is a legal challenge to the administrative regulation there will be an increased cost to state government.

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: No effect on state revenues. However, the program will allow a maximum of \$5 million to be reimbursed to counties for the cost they incur in the transportation of non public school students.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no enforcement necessary. The minimal implementation costs will be funded from the General Fund appropriation to the Transportation Cabinet.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternatives of allowing the funds to be dispersed directly to non public schools was rejected based on the Supreme Court decision of the fall of 1994.

(8) Assessment of expected benefits: Aid to counties which provide transportation for all of their school students rather than just the public school students.

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was applied in that only the counties spending money for the transportation of non public school students will be eligible to receive reimbursement funding.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. County fiscal courts.

3. State the aspect or service of local government to which this administrative regulation relates. The transportation of non public and public school students allowed by KRS 158.115 to be funded by a county fiscal court.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The administrative regulation allows a reimbursement of up to \$2.5 million each year of the current biennium to the fiscal courts in Kentucky which have provided financial support for the transportation of non public school students. The \$2.5 million was appropriated by the 1998 Regular Session of the General Assembly. Since the total available for the entire state is only \$2.5 million each year, the applications for reimbursement will likely have to be prorated.

Revenues (+/-): + \$2.5 million for all counties

Expenditures (+/-): The eligible counties will incur only the administrative cost of passing a resolution requesting the fund reimbursement.

Other Explanation:

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of District Support Services (Amendment)

702 KAR 3:060. Procedure for payment of employees.

RELATES TO: KRS [156.031] 156.070, 160.291, 160.450, 161.210

STATUTORY AUTHORITY: KRS 156.070, 161.210

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~ KRS 160.291 provides for all school employees working on a continuing, regular basis of less than twelve (12) months a year to be paid regularly, on dates determined by the employing board of education, with the gross salary received on each pay date to be equal to the employee's annual salary divided by the number of pay dates and with payments deemed to be for services rendered. KRS 160.450 provides for the fiscal year of all school districts to begin on July 1 and end on June 30. KRS 161.210 allows for requiring teachers to submit reports at the time and in the manner prescribed, and KRS 156.070 gives the Kentucky [State] Board of [for Elementary and Secondary] Education the management and control of the public schools. This administrative regulation, in the interests of uniform and efficient fiscal management, establishes procedures relative to payment of certified and classified school employees.

Section 1. A board of education shall establish a calendar for payment of salaries to all school employees working on a continuing, regular basis of less than twelve (12) months a year and may require a teacher to present reports of attendance and other necessary reports before the salary check is delivered.

Section 2. A board of education may adopt a policy whereby employees' salaries may be made payable for a period in excess of the number of months for which the school is operated, not exceeding twelve (12) months, but a board doing such shall adopt one (1) of the

following plans:

(1) The board of education shall write all deferred salary checks on or before June 30 of the current fiscal year and these deferred checks shall then be delivered at the regular pay periods in July and August of the following fiscal year; or

(2) The board of education shall set up a payroll account into which shall be transferred on the order of the board of education on or before June 30, the gross amount for salaries earned by employees but not paid. The amounts transferred into this payroll account shall be held for the payment of deferred employees' salaries and shall not be used for any other purpose. Payment of salaries from this fund shall be at the regular pay periods in July and August of the following fiscal year.

Section 3. Upon written request to the superintendent by a school district employee, a local board of education shall pay all deferred salary checks to the employee. To comply with the written request, a local board shall provide the deferred checks prior to the end of the fiscal year and no later than the first regular payroll date occurring after completion of the employee's responsibilities or duties.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 25, 1998, at 10 a.m. in the State Board room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by September 18, 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 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, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (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: Amendments to the regulation are made to conform with current statutes.
- (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
Kentucky Board of Education
Department of Education
Office of District Support Services
(Amendment)

702 KAR 3:110. Document filing dates.

RELATES TO: KRS 156.160(1)(j), 157.060

STATUTORY AUTHORITY: KRS 156.160(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(j) requires the Kentucky Board of Education to establish a uniform series of financial forms for local school districts. KRS 157.060 requires a local district to submit an annual financial report. This administrative regulation establishes the forms and dates of filing for Kentucky Board of Education financial archives.

Section 1. The documents which become a part of Kentucky Board of Education archives shall be submitted to the Division of Finance electronically in the following adopted formats prescribed by the Municipal Information System (MUNIS) and by the following dates annually:

- (1) Tentative Budget. (MUNIS Tentative Working Budget, dated August, 1997), May 30;
- (2) Annual Financial Report (MUNIS Annual Financial Report, dated August, 1997), July 25;
- (3) [(2)] Balance Sheet (MUNIS Group Code Balance Sheet, dated August, 1997), July 25; and
- (4) [(3)] Working Budget (MUNIS Working Budget, dated August, 1997), September 30 [45].

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

- (a) Tentative Budget. (MUNIS Tentative Working Budget, dated August, 1997);
- (b) Annual Financial Report (MUNIS Annual Financial Report, dated August, 1997);
- (c) Balance Sheet [(b)]MUNIS Group Code Balance Sheet, dated August, 1997; and
- (d) Working Budget [(e)]MUNIS Working Budget, dated August, 1997).

(2) This material may be inspected, copied, or obtained at the Department of Education, Office of District Support Services, Capital Plaza Tower, 15th Floor, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

WILMER S. CODY, Commissioner of Education
 HELEN MOUNTJOY, Chairperson
 KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 25, 1998, at 10 a.m. in the State Board room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by September 18, 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 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, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (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 those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Amendment)

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 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 qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall 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 preparation and certification program for school principals, at all grade levels. This administrative regulation is not required by federal law.

Section 1. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

- (a) Qualification for a Kentucky classroom teaching certificate;
- (b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;
- (c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and
- (d) Successful completion of the Kentucky Teacher Internship Program, as provided in 704 KAR 20:045, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 2. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare a candidate for the position of School Principal as specified in the standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" that is incorporated by reference and [following Administrator Standards] adopted by the Education Professional Standards Board. The standards are as follows:

(1) School leader [Administrator] standard 1. A school [H-The] administrator is an [the] instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community [guides, facilitates, and supports the curriculum, instruction, and assessment];

(2) School leader [Administrator] standard 2. A school [H-The] administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth; [practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community,

school involvement to improve the learning environment for all students; and]

(3) School leader [Administrator] standard 3. A school [H-The] administrator is an educational [the organizational] leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment; [and manager who acts within legal and ethical guidelines to accomplish educational purposes.];

(4) School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(5) School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and

(6) School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

Section 3. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

Section 4. Statement of Eligibility for Internship. A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

- (1) Has successfully completed an approved program of preparation;
- (2) Has three (3) years of full-time teaching experience; and
- (3) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

Section 5. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 704 KAR 20:470.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

- (a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or
- (b) If the applicant has not successfully completed the two (2) years of experience, completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed.

Section 6. Implementation Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to a student admitted to a program of preparation beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the pro-

gram by September 1, 2000.

(a) A candidate formally admitted to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 by September 1, 1997, shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. The successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester hours shall be designed to address content of the preparation program not addressed in 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400;

3. A recommendation from the institution of higher education for the appropriate certificate; and

4. Successful completion of the required assessment in effect at the time of application for the certificate.

(b) A candidate who holds a valid Kentucky principal certificate shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Enrollment in an approved program of preparation that shall:

a. Be designed to address leadership at all grade levels;

b. Include school-based experiences; and

c. Not require more than three (3) to six (6) additional hours of graduate credit; and

2. A recommendation from the institution of higher education for the appropriate certificate.

(3) A candidate who fails to complete the approved program and appropriate assessments specified in subsection (2) of this section by September 1, 2000, and does not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) A college or university shall take adequate steps to inform a candidate in these programs regarding the implementation dates identified in this section.

Section 7. Incorporation by Reference. (1) "Interstate School Leaders Licensure Consortium Standards for School Leaders, Copyright 1996 by the Council of Chief State School Officers", which includes school leader standards, expected knowledge, dispositions, and performances of beginning school leaders, is incorporated by reference.

(2) Copies of the booklet may be inspected at the Division of Testing and Internship, Office of Teacher Education and Certification, Kentucky Department, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and obtained from either the Division of Testing and Internship or the Council of Chief State School Officers, Attn: Publications, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431.

- ROSA WEAVER, Chair

ROBERT S. SHERMAN, Legislative Liaison

APPROVED BY AGENCY: May 11, 1998

FILED WITH LRC: August 12, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held September 23, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1998, five work days prior to hearing, of their intent to attend. If no notification 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, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All applicants for principal certification

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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 promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: New standards brochures will be printed and the Kentucky Principal Intern Program Handbooks will have to be revised and printed.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: The new standards are more rigorous than the currently required standards.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The administrative standards will apply to all principal applicants.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Epidemiology and Health Planning (Amendment)

902 KAR 2:090. Tuberculosis detection, prevention, and control.

RELATES TO: KRS 158.037, 211.180, 214.034, 215.520[; 1996 Ky. Acts ch. 33]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 215.520, 1998 GA HB 131, 132 [; EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: HB 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996;] reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services to implement a statewide program for the detection, prevention, and control of communicable diseases. The 1998 General Assembly amended KRS 214.034 to delete the requirement that the

Cabinet for Health Services establish tuberculosis testing schedules for children; to allow a local health department, with the approval of the Department for Public Health, to require tuberculosis testing of all first time enrollees in a public or private school within the health department's jurisdiction; to provide an exemption from tuberculosis testing if the child's parent or guardian objects on religious grounds and so states in writing, but allow a local health department to test that child in a suspected case of tuberculosis. KRS 158.037 was also amended to delete the requirement that public or private elementary and secondary schools report tuberculin skin test results to the local health department. This administrative regulation is to conform to the provisions of the amended law. [KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Health Services.] KRS 215.520 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 215 [1996 Ky. Acts ch. 33]. This administrative regulation describes the procedure for drug susceptibility testing of antituberculosis drugs, the procedure by which timely hospitalization for persons with active tuberculosis shall be obtained, and measures to be taken to prevent spread of tuberculosis. [KRS 158.037 requires the establishment of administrative regulations for reporting tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Health Services.] This administrative regulation permits, with approval of the Department for Public Health, [mandates] tuberculin testing for all first time school enrollees in a private or [and] public school in a local health department's jurisdiction [schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments].

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intradermal injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique.

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

(4) The definition of "active tuberculosis" is governed by KRS 215.511.

(5) The definition of "isolates" is governed by KRS 215.511.

(6) "Exception patient" means a patient with tuberculosis identified by the local health department as being in exceptional or infrequent circumstances.

(7) "Exceptional or infrequent circumstances" means:

(a) Short-term hospitalization for invasive diagnostic procedures, respiratory isolation, management of drug-resistant disease, other rare clinical circumstances which, in the judgement of a physician of the Cabinet for Health Services require hospitalization; or

(b) Security measures to counter recalcitrant behavior.

Section 2. (1) A reaction to a tuberculin skin test shall be interpreted using the "Treatment of Tuberculosis Infection in Adults and Children".

(2) When the skin test of any child indicates that treatment is needed, the child shall be treated using "Treatment of Tuberculosis Infection in Adults and Children".

Section 3. A local health department may, with the approval of the Department for Public Health, require a first-time enrollee in a public or private school with the health department's jurisdiction to [in the Commonwealth shall] be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the director of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with [Section 3 of] this administrative regulation.

Section 4. (1) A local health department may, with the approval of the Department for Public Health, require a first-time enrollee in a public or private school to [shall] present a valid certificate approved

by the Cabinet for Health Services and signed by the attending physician, advanced registered nurse practitioner, or by the director of the local health department having jurisdiction or his designee, containing the date of the most recent tuberculin skin test and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a licensed or certified health professional. The certificate shall become a permanent part of the child's school health record.

(2) No child shall be tested for tuberculosis if the child's parent or guardian objects on religious ground to the testing and so states in writing. However, if a case of tuberculosis is suspected, a local health department may require testing of this child.

(3) If tuberculin skin testing is medically contraindicated according to the written statement of a physician, the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of the currently recommended American Thoracic Society and the Centers for Disease Control and Prevention prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 5. [A public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) The millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and

(a) The child's name;

(b) Grade; and

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 6. [If the prevalence of significant tuberculin reactors among first-time enrollees at a school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the director of the local health department having jurisdiction or the Cabinet for Health Services. [Results of the testing shall be provided the local health department having jurisdiction.] Additional control measures may then be required at the discretion of the director of the local health department having jurisdiction or the Cabinet for Health Services in order to protect the public health.

Section 6. [7:] Drug susceptibility testing to determine the efficacy of prescribed drug therapy for all persons with active tuberculosis shall be performed as follows:

(1) Drug susceptibility testing of initial isolates from clinical specimens obtained from any patient with active tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory.

(2) Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who, after three (3) months of treatment, continues to produce specimens which are culture positive for tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory on the latest isolate obtained from the patient by the physician.

Section 7. [8:] The exception patient shall be assured of timely hospitalization so that no delay shall occur in diagnosis, treatment, or respiratory isolation, when required. The hospitalization shall be facilitated through a local health department director's designee. Private practitioners may refer an exception patient to the local health department in the county in which the exception patient resides.

Section 8. [9:] (1) An exception patient who is hospitalized shall be interviewed by the local health department director's designee within seventy-two (72) hours to determine existing health care insurance coverage (third-party insurer, Medicaid).

(2) The local health department director's designee shall ensure that a hospitalized exception patient without health coverage is evaluated for Medicaid eligibility by the Cabinet for Families and Children and shall assist the exception patient and the Cabinet for Families and Children in efforts to obtain health coverage.

(3) Reimbursement for tuberculosis inpatient services for an ex-

ception patient who is determined to be ineligible for health care insurance coverage shall be made to the provider by the Cabinet for Health Services through the local health department at the Medicaid per diem rate or other rate as approved in advance by the Cabinet for Health Services. Reimbursement for tuberculosis inpatient services for an exception patient shall be contingent on the amount of funds accessible to the Tuberculosis Control Program of the Department for Public Health.

(4) Time-limited payment for the hospitalized exception patient shall be made through a contract or memorandum of understanding between the local health department and the admitting facility.

(a) The local health department shall consult with the Cabinet for Health Services, Tuberculosis Control Program, prior to admission of an exception patient in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission of an exception patient is required, this consultation shall occur within seventy-two (72) hours.

Section 9. [10:] (1) A security measure which prevents continued transmission of tuberculosis by the exception patient shall be applied incrementally, progressing from remaining at home which is the least restrictive measure, to a more restrictive measure which may be admission to a suitable halfway house, hospital-based respiratory isolation, with guard if necessary, or an adequately ventilated correctional unit.

(2) The local health department director's designee shall arrange adequate security measures to prevent continued transmission of tuberculosis in a setting commensurate with the degree of risk posed by the exception patient.

(3) Time-limited payment for security of an exception patient who is hospitalized or who enters a receiving facility, such as a halfway house or correctional unit, shall be made through a contract or memorandum of understanding between the local health department and the receiving facility.

(a) The local health department shall consult with the Cabinet for Health Services prior to acquisition of security services or placement in a receiving facility in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission or placement is required, this consultation shall occur within seventy two (72) hours.

Section 10. [11:] The following material is incorporated by reference in this administrative regulation:

(1) The Joint Statement of the American Thoracic Society and the Centers for Disease Control and Prevention, "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children, 1994", and published by the American Lung Association.

(2) Material incorporated by reference may be inspected, copied, [reviewed] or obtained at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

Agency Contact Person: Clarkson Palmer MD, Glyn Caldwell MD

(1) Type and number of entities affected: All local health departments, public and private elementary and secondary schools, children entering Kentucky educational facilities.

(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 hearing requested, no comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing requested, no comments received.

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

1. First year following implementation: Schools will no longer be required to routinely maintain and report results of TB skin testing of enrollees.

2. Second and subsequent years: Same as 1.above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Local health departments will give fewer TB skin tests and lose revenue from the provision of this service.

(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: No public hearing requested, no comments received.

(b) Kentucky: Same as (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative 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: This will positively effect the management of TB in Kentucky,

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because all regulated entities are effected to the same degree.

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. Local health departments will be effected in that the number of TB skin tests for those who would choose the local health department for this service will decrease.

3. State the aspect or service of local government to which this administrative regulation relates. This relates to the provision by local health departments of TB skin testing for school children.

4. How does this administrative regulation affect the local government or any service it provides. This will decrease the number of TB skin tests provided by the local health department.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(Amendment)**

902 KAR 20:081. Operations and services; home health agencies.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, 314.011(8), 314.042(8), 320.210(2), 1998 GA SB 28, sec. 2 [(1), (2)]

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

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 provides licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) ~~["Board" means the Commission for Health Economics Control in Kentucky:~~

(2) "Coordination agreements" means agreements to coordinate health care services within the service area of the agency.

(2) [(3)] "Home health aide" means a person who provides personal care and other related health services, as ordered by the attending physician.

(a) Selection of home health aides shall take into account the ability to:

1. Read and write;
2. Understand and carry out instructions;
3. Record messages; and
4. Keep simple records.

(b) Other factors to consider.

1. Emotional and mental maturity; and
2. Interest in and sympathetic attitude toward caring for the sick at home.

(3) [(4)] "Intermittent nursing service" means service up to a few hours a day, one (1) day or several days per week or month. On occasion, service may be provided more frequently for more time per day up to seven (7) days per week.

[(5)] "License" means an authorization issued by the Board for the purpose of operating a home health agency and offering home health service.]

(4) [(6)] "Medical social worker" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has [had] at least one (1) year of social work experience in a health care setting. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(5) [(7)] "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

(6) [(8)] "Physical therapist" means a person who is currently licensed by the Kentucky State Board of Physical Therapy.

(7) [(9)] "Qualified medical social worker" means a person who has a master's degree from a school of social work accredited by the Council on Social Work Education and who has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(8) [(10)] "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope. A home health agency is a public agency or private organization, or a subdivision of such an agency or organization which provides intermittent health and health related services, to patients in their place of residence, either singly or in combination as required by a plan of treatment prescribed by a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the home health agency and for compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing and social information provided by the physicians responsible for the patient's care, by institutional personnel and by staff of the home health agency.

(b) Establishment and review of plan of treatment. The policy shall assure that services and items to be provided are specified under a plan of treatment established, signed and regularly reviewed by the physician who is responsible for the care of the patient.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4) The total plan shall be reviewed by the attending physician, in consultation with agency professional personnel at such intervals as the severity of the patient's illness requires, but in any instance, at least once every two (2) months. Except for drug orders, verbal authorization to change the plan of treatment shall be reviewed and signed by the physician within twenty-one (21) [seven-(7)] days after the verbal order is issued.

(5) Clinical records. The home health agency shall maintain a clinical record for each patient which covers the services the agency provides directly and those provided through arrangements with another agency; and which contains pertinent past and current medical, nursing, and social information, including the plan of treatment. All records must be confidential.

(6) [Physician's] Original drug orders and changes in orders. The following shall be signed by the physician or other ordering personnel acting within the limits of their statutory scope of practice and incorporated in the patient record maintained by the agency:

(a) Original orders for drugs; and

(b) Changes in orders for the administration of those drugs subject to federal and state controlled substance acts, and other legend drugs, i.e., requiring prescriptions. Verbal authorization [by the physician] to change drug orders shall be reviewed and signed by the same ordering personnel [physician] within seven (7) days after order is issued.

(7) Evaluation. The agency shall have procedures which provide for systematic evaluation of its program at least once every two (2) years. The agency staff shall conduct the evaluation. The program evaluation shall include:

(a) Measures to determine whether the policies established are followed in providing services. These shall include a review of patient records on a sample basis in order to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively;

(b) A mechanism for reviewing overall management aspects of its service to assure economy and efficiency of operations.

(8) Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency.

(b) Identification of agency's role in meeting those needs.

(c) Staff expansion for a two (2) year period.

(d) Establishment of goals and objectives.

(e) Coordination of volunteer services, community education and community development activities if these services are provided by the agency.

(9) Subdivision operating as home health agency. When a subdivision of an agency (e.g., the home care department of a hospital or the nursing division of a health department) applies for license, the subdivision rather than the parent organization must be licensed as a home health agency and maintain records in such a way that subdivision activities and expenditures attributable to services provided are identifiable. The parent organization shall determine who signs the

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

coordination agreements and other official documents, and receive and disburse funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including licensure where this is required by state law). The policies shall be written and available to staff and cover:

- (a) Wage scales, hours of work, vacation and sick leave;
- (b) Preemployment criminal conviction information;
- (c) A plan for preemployment and periodic medical examination, tuberculin test and/or chest x-ray, and other appropriate tests;
- (d) [(e)] Plans for orientation and for on-the-job training, where necessary;

- (e) [(d)] Periodic evaluation of employee performance; and
- (f) [(e)] Job descriptions for each category of health personnel which are specific and include the type of activity each may carry out.

(2) Agency supervision. The home health agency shall designate a physician or registered nurse to supervise the agency's performance in providing home health services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician.

(3) Supervision of therapy services. When services of aides or other personnel providing supplementary services are utilized in providing home health services, they shall be trained and supervised by appropriate professional personnel. When such supervision is less than full-time, e.g., for a limited number of hours or days each week, the supervision shall be provided on a planned basis and shall be frequent enough to assure adequate review of individual treatment plans and progress.

(4) Supervision of home health aides. A registered nurse shall provide direct supervision as necessary and be readily available at other times by telephone. The supervisor shall be constantly evaluating the home health aide in terms of the aide's ability to carry out assigned duties, to relate well to the patient, and to work effectively as a member of a team of health workers. The registered nurse, or appropriate professional staff member, if other services are provided, shall make a supervisory visit to the patient's residence at least every two (2) weeks either when the aide is present to observe and assist, or when the aide is absent to assess relationships and determine whether goals are being met.

(5) Training of home health aides. The home health agency shall determine that home health aides receive or have received a basic training program for home health aides. A home health aide shall be trained in:

- (a) Methods of assisting patients to achieve maximum self-reliance;
- (b) Principles of nutrition and meal preparation;
- (c) The aging process and the emotional problems of illness;
- (d) Procedures for maintaining clean, healthful and pleasant environment;
- (e) Awareness of changes in patient's condition that should be reported;
- (f) Work of the agency and the health team; and
- (g) Ethics, confidentiality and recordkeeping.

Section 5. Provision of Services. (1) The home health agency shall provide intermittent skilled nursing services and other services for restoring, maintaining and promoting health and/or rehabilitation with minimum disruption of daily living.

(2) Services shall range from skilled nursing services to basic health related services to unskilled supportive services.

(3) Services shall be available five (5) days a week with back-up arrangements for weekends and emergency services.

(4) In addition to intermittent skilled nursing services, the agency shall provide home health aide services, medical supplies and equipment services. When a home health agency provides therapeutic and medical social services the following conditions shall be met:

(a) Physical, speech or occupational therapy. When an agency provides or arranges for physical, speech or occupational therapy, service shall be given in accordance with a physician's written orders by or under the supervision of a therapist meeting the respective qualifications as set forth in Section 2(7), (8), and (10) of this adminis-

trative regulation.

(b) Respiratory therapy. When an agency provides or arranges for respiratory therapy, services shall be given in accordance with a physician's written order, by or under the supervision of a licensed nurse with experience and/or training in the field of respiratory therapy.

(c) Medical social services. When an agency provides or arranges for medical social services, services shall be given in accordance with a physician's written order by a qualified medical social worker or a medical social worker meeting the qualifications set out in Section 2 of this administrative regulation.

(5) Home health aide services. Visits of the home health aide for providing personal care and other related health services must be ordered by the physician and included in a plan of treatment approved by the physician.

(6) Services arranged for with another licensed provider. When a home health agency makes arrangements for the provision of home health services by another agency which is a licensed provider of services, there shall be a written agreement which:

(a) Designates the services which are being arranged for. Services provided are to be within the scope and limitations set forth in the plan of treatment. Such services may be altered only upon the specific orders of the initiating home health agency issued as a result of a change made by the physician in the patient's plan of treatment;

(b) Describes how the contracted personnel, where applicable, are to be supervised; and

(c) Provides for the recording of the progress notes and observations of the contracted personnel in the home health agency records for purposes of planning and evaluating patient care.

(7) Services arranged for with a nonlicensed provider. When a home health agency arranges for services with an agency that is not a licensed provider of services, a contract shall be written. The contract shall:

(a) Designate the services which are being arranged for;

(b) Specify the period of time the contract is to be in effect and how frequently it is to be reviewed;

(c) Describe how the contracted personnel are to be supervised;

(d) State that home health services provided to the patient are in accordance with a plan established by the patient's physician in conjunction with home health agency staff and, when appropriate, others involved in the patient's care. Services provided shall be within the scope and limitations set forth in the plan and shall not be altered in type, scope, or duration by the secondary agency; and

(e) Assure that personnel and services contracted for meet the same requirements as those specified for home health agency personnel and services, including personnel qualifications, functions, supervision, orientation and in-service training.

(8) Service agreements with other health care facilities. Coordination agreements as defined in Section 2 of this administrative regulation shall be developed with the major health care providers in the service area including: hospitals, skilled, intermediate and personal care facilities and family care homes.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 10, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(Amendment)

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 125 licensed home health agencies.

(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: None

(c) If detrimental effect would result, explain detrimental effect: None

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

902 KAR 55:010. Licensing of manufacturers and wholesalers.

RELATES TO: KRS 218A.150(1), 218A.160, 218A.170, 218A.200, 315.036, 21 CFR 210.1 to 210.3, 211.1 to 211.208, 1301.01 to 1301.93, 1304.01 to 1304.33 [Chapter 218A]

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 218A.150(1), 218A.250, 1998 GA HB 132 [HB-799 of the 1990 GA, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.150, 218A.160 and 218A.170 authorize [authorizes] the Cabinet for Health Services to license manufacturers and wholesalers of controlled substances. [It is the purpose of] This administrative regulation establishes [to establish] uniform requirements for the licensing of manufacturers and wholesalers. [such licenses. Executive Order 96-862; effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Health care entity" means any organization, or business that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care.

(2) "Manufacturer" means a person engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or both, and includes any packaging or repackaging of a controlled substance or the labeling or relabeling of its container.

(3) "Wholesale distribution" means:

(a) Distribution of a controlled substance to a person other than a consumer or a patient; and

(b) Is not a distribution by:

1. A charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 distributing to a nonprofit affiliate of the organization to the extent permitted by law;

2. A hospital or health-care entity distributing to another hospital or health-care entity under common control;

3. A pharmacy that is exempt pursuant to 902 KAR 55:060;

4. An intracompany sale;

(4) "Wholesaler" means a person who is engaged in the wholesale distribution of a controlled substance, including:

(a) Own-label distributor;

(b) Private-label distributor;

(c) Jobber;

(d) Broker;

(e) Warehouse, including a manufacturers' or distributors' warehouse, chain drug warehouse, or wholesale drug warehouse;

(f) Independent wholesale drug trader; and

(g) Pharmacy that conducts wholesale distributions.

Section 2. License Required and Exceptions. (1) A separate license shall be required for each location from which a manufacturer or wholesaler distributes a controlled substance into the Commonwealth.

(2) If a location has more than one (1) registration with the Drug Enforcement Administration, each registrant that distributes in the Commonwealth shall obtain a separate license.

(3) A license to distribute controlled substances shall not be transferred or assigned.

(4) A license shall not be required for an agent or employee of a licensee if the agent or employee is acting in the usual course of business or employment.

Section 3. Application for License or Renewal. (1) An application for a manufacturer's or wholesaler's license shall include the following information:

(a) The name, business address and telephone number of the prospective licensee;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(b) All trade or business names used by the licensee;

(c) Name, address, and telephone number of each contact person for controlled substance handling, storage, and recordkeeping;

(2) An application for a manufacturer's or wholesaler's license shall include the following information about the ownership of the business:

(a) The type of ownership of operation;

(b) If an individual or sole proprietorship, the full name of the individual or proprietor and the name of the business entity;

(c) If a partnership, the name and address of each partner and the name of the partnership;

(d) If a limited liability company, the name and address of each manager and member; and

(e) If a corporation, the name and title of each corporate officer and director, the corporate names, and the names of the state of incorporation.

(3) A description of the business, the physical facilities, and the type security provided.

(4) A change in the information required by subsection (1), (2), or (3) shall be submitted to the cabinet:

(a) Within thirty (30) days from the date of the change, or at the time of license renewal, whichever occurs first; and

(b) On a License Update Form, DCB-11 or the License Renewal Form, DCB-12.

Section 4. Qualifications for License or Renewal. (1) The cabinet shall consider the following factors in reviewing the qualifications of an applicant to engage in the manufacture or wholesale distribution of controlled substances:

(a) A conviction of the applicant or its managing officers under any federal, state, or local law relating to controlled substances;

(b) A felony conviction of the applicant or its managing officers;

(c) An applicant's past experience in the manufacture or distribution of controlled substances;

(d) The furnishing of false or fraudulent information in connection with an application for a license from a federal, state or local government agency;

(e) Suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of controlled substances;

(f) Compliance with licensing requirements under previously granted licenses, if any;

(g) Compliance with requirements to maintain or make available to the cabinet or to federal, state, or local law enforcement officials those records required by KRS 218A.200;

(h) The criteria listed in KRS 218A.160; and

(i) Violations of applicable federal or state law, rule or administrative regulation governing a controlled substance that relates to Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs in 21 CFR 210.1 to 210.3 or Current Good Manufacturing Practice for Finished Pharmaceuticals in 21 CFR 211.1 to 211.208, adopted by the U.S. Food and Drug Administration.

(2) A license shall be renewed if the cabinet finds that the applicant:

(a) Qualifies for a license pursuant to subsection (1) of this section;

(b) Complies with Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances 21 CFR 1301.01 through 1301.93, adopted by the Drug Enforcement Administration;

(c) Complies with Records and Reports of Registrants 21 CFR 1304.01 through 1304.33, adopted by the U.S. Drug Enforcement Administration;

(d) Complies with KRS 315.036 and 201 KAR 2:105; and

(e) Complies with KRS 218A.200.

(3) A manufacturer or wholesaler not located within the Commonwealth of Kentucky may obtain a license or license renewal on the basis of reciprocity if:

(a) The out-of-state manufacturer or wholesaler possesses a valid license granted by another state and the legal standards for licensure in the other state are no less stringent than the standards established by this administrative regulation;

(b) The out-of-state manufacturer or wholesaler is currently registered with the U.S. Drug Enforcement Administration; and

(c) The state in which it is licensed extends reciprocity to manufacturers and distributors licensed by Kentucky.

(4) A license issued pursuant to this administrative regulation may be suspended or revoked for cause.

(5) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [State License Required of Manufacturers and Wholesalers. No person shall manufacture, wholesale, distribute, or repack any controlled substance in this state without having first obtained a license to do so from the Cabinet for Health Services.]

Section 2. Out-of-state Exemptions. Manufacturers, wholesalers, distributors, and repackers not located within the Commonwealth of Kentucky, but who are registered with the appropriate federal agency pursuant to the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513: 84 Stat. 1236) and the regulations promulgated thereunder, are hereby exempted from the licensure requirements of this administrative regulation and are authorized to operate as such in this state by virtue of their federal registration.

Section 3. Joint Venture Exemptions. Two (2) or more pharmacies, who engage in a joint venture for the purpose of purchasing drugs in order to effectuate a savings in the purchase price thereof and in which no profit is realized in the transaction by any of the participating pharmacies, are exempt from the licensure requirements of this administrative regulation provided proper records of the transaction are maintained.

Section 4. Qualifications for Licensing. (1) No license shall be issued pursuant to this administrative regulation unless and until the applicant has furnished proof satisfactory to the Cabinet for Health Services:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.

(3) A license issued pursuant to this administrative regulation may be suspended or revoked for cause.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.]

Section 5. License Fees; Renewals. An application [All applications] for a license under the provisions of this administrative regulation shall be submitted to the Cabinet for Health Services on a DCB-10 form [forms furnished by the department] and shall be accompanied by a license fee of \$240. All licenses shall expire on June 30th following date of issuance and be renewable annually thereafter upon payment of a renewal fee of \$175 accompanied by a DCB-12 form, [and shall be nontransferable.]

Section 6. Recordkeeping. (1) Records shall be maintained in accordance with KRS 218A.200 and with 21 CFR 1304.01 to 1304.33, adopted by the U.S. Drug Enforcement Administration.

(2) Records or copies of records that relate to distributions within the Commonwealth shall be made available to the cabinet upon request.

Section 7. License Termination, Lapse, Suspension or Revocation. (1) A license issued pursuant to this administrative regulation shall be suspended or revoked for cause.

(2) A license shall terminate if the licensee dies or ceases legal existence.

(3) A license shall lapse if the renewal application and renewal fee have not been filed with the cabinet prior to June 30 of each year.

(4) A lapsed license is void and an application for a new license shall be required.

(5) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) DCB-10, 8-98 edition;

(b) DCB-11, 8-98 edition;

(c) DCB-12, 8-98 edition;

(2) This material may be inspected, copied, or obtained at the Cabinet for Health Services, Department for Public Health, Drug Control and Professional Practices, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. - 4:30 p.m. [Codeine Registry. All wholesalers and manufacturers (including distributors and repackers) shall keep a separate codeine registry showing the following: date, registration number of recipient, name of recipient, address, name of preparation, and quantity.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dana Droz

(1) Type and number of entities affected: An undeterminable number of manufacturers, wholesalers, distributors or repackers of controlled substances are affected by this administrative regulation. This number cannot be determined at this time because no agency currently licenses or tracks this entity.

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

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

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

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

1. First year following implementation: The amendments do not require any compliance, reporting, or paperwork except what is standard licensing procedure or already required by federal and state statutes or regulations. The amended regulation will eliminate the unfair advantage out-of-state distributors have enjoyed for many years.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The administrative body will incur increased costs to issue licenses to out-of-state facilities.

2. Continuing costs or savings: Increased costs will recur each year because licenses are renewed annually.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation except what is already required by federal and state statutes or regulations.

(4) Assessment of anticipated effect on state and local revenues: State revenues will increase due to an increase in the number

of license fees received. The amount cannot be determined at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 218A.150 requires that license fees be deposited in a revolving fund to be used by the cabinet to carry out the provisions of KRS Chapter 218A.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because the current regulation conflicts with the requirements of KRS Chapter 13A and also unfairly penalizes Kentucky businesses.

(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 cabinet will have improved access to distribution records that are needed to carry out its statutory mandate.

(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: The cabinet would be unable or significantly delayed in its efforts to carry out the statutory mandate.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the statutory requirements are identical for all manufacturers, wholesalers, distributors and repackers regardless of size, type of business or location.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The criteria for licensing are set forth in KRS 218A.160.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements are not stricter because there is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate; therefore justification is not required.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14

STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 218A.020, 218A.100, 218A.250, 1998 GA HB 132

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.100 authorizes the Cabinet for Health Services [Human Resources] to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

substances in Schedule III. KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services [Human Resources], after considering the criteria, designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical position or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline, including organometallic complexes and chelates;
- (10) [(9)] Phentermine;
- (11) [(+)] Pipradrol; [and]
- (12) Sibutramine; and
- (13) [(+)] SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Carisoprodol;
- (5) Chlordiazepoxide;
- (6) Clobazam;
- (7) Clonazepam;
- (8) Clorazepate;
- (9) Clotiazepam;
- (10) Cloxazolam;
- (11) Delorazepam;
- (12) Diazepam;
- (13) Estazolam;
- (14) Ethyl loflazepate;
- (15) Fludiazepam;
- (16) Flunitrazepam;
- (17) Flurazepam;
- (18) Halazepam;
- (19) Haloxazolam;
- (20) Ketazolam;
- (21) Loprazolam;
- (22) Lorazepam;
- (23) Lormetazepam;
- (24) Mebutamate;
- (25) Medazepam;
- (26) Methohexital;
- (27) Midazolam;
- (28) Nimetazepam;
- (29) Nitrazepam;
- (30) Nordiazepam;
- (31) Oxazepam;
- (32) Oxazolam;
- (33) Pinazepam;
- (34) Prazepam;
- (35) Quazepam;
- (36) Temazepam;
- (37) Tetrazepam;

- (38) Triazolam; and
- (39) Zolpidem.

Section 3. Narcotics. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Butorphanol;
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);
- (3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and
- (4) Nalbuphine.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dana Droz

(1) Type and number of entities affected: Approximately 30,000 health care professionals including pharmacists, physicians, dentists, veterinarians and nurses in the Commonwealth are affected by this administrative regulation.

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

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

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation that is not already required for other substances in schedule IV.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the only change is to add two drugs to the list of substances in schedule IV.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because the result would be nonconformity with federal regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Scheduling these two drugs will conform with federal regulations

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of KRS Chapter 218A apply to all substances and all health care professionals uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 801; and 21 CFR 1308.14.

2. State compliance standards. The criteria for substances in schedule IV are set forth in KRS 218A.100.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in schedule IV are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment will add sibutramine and modafinil to schedule IV. Sibutramine is already listed in schedule IV in the federal regulations and modafinil is in the process of being added. Therefore this regulation will conform to federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HEALTH SERVICES Department for Public Health Division for Adult and Child Health (Amendment)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020 to 218A.130, 21 CFR 1308.31-1308.32

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250, 1998 GA HB 132 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant products from the provisions of KRS Chapter 218A that have been

exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products. The Cabinet for Health Services exempts the following prescription products from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

(1) Acetaminophen 325mg/Butalbital 50 mg, tablet, NDC 00456-0674: butalbital 50 mg;

(2) Acetaminophen 500mg/Butalbital 50 mg, tablet, NDC 00456-0671: butalbital 50 mg;

(3) ALAGESIC Tablets, tablet, NDC 55726-0300: butalbital 50 mg;

(4) Alkaloids of Belladonna and Phenobarbital, tablet, NDC 00377-0527: phenobarbital 16.20 mg;

(5) Amaphen Capsules (reformulated), capsule, NDC 11311-0954: butalbital 50 mg;

(6) Aminophylline and Phenobarbital, enteric coated tablet, NDC 00115-2156: phenobarbital 15 mg;

(7) Aminophylline and Phenobarbital Tablets, tablet, NDC 00115-2154: phenobarbital 15 mg;

(8) Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg;

(9) Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50 mg;

(10) Anoquan Modified Formula, capsule, NDC 00166-0881: butalbital 50 mg;

(11) Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 3.24 mg/ml;

(12) Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg;

(13) Antispas, tablet, NDC 00377-0622: phenobarbital 16.20 mg;

(14) Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg;

(15) Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg;

(16) Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg;

(17) Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml;

(18) Antispasmodic Elixir, elixir, NDC 00364-7002: phenobarbital 3.20 mg/ml;

(19) Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml;

(20) Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg;

(21) Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg;

(22) Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg;

(23) Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg;

(24) Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3 mg/ml;

(25) Antrocol Tablets, tablet, NDC 00095-0040: phenobarbital 16 mg;

(26) Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg;

(27) Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg;

(28) Axotal, tablet, NDC 00013-1301: butalbital 50 mg;

(29) Azpan, tablet, NDC 00172-3747: phenobarbital 8 mg;

(30) B-A-C Tablets, tablet, NDC 00259-1256: butalbital 50 mg;

(31) Bancap, capsule, NDC 00456-0546: butalbital 50 mg;

(32) Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg;

(33) Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg;

(34) Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml;

(35) Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg;

(36) Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg;

(37) Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;

(38) Bel-phen-ergot s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;

(39) Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: pheno-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- barbital 40 mg;
- (40) Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- (41) Belladenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- (42) Belladenal-S, sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- (43) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- (44) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- (45) Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- (46) Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- (47) Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- (48) Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- (49) Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- (50) Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- (51) Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- (52) Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- (53) Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml;
- (54) Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
- (55) Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
- (56) Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
- (57) Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg;
- (58) Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
- (59) Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
- (60) Butacet Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
- (61) Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
- (62) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
- (63) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
- (64) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
- (65) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
- (66) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
- (67) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg;
- (68) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
- (69) Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
- (70) Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
- (71) Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
- (72) Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
- (73) Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
- (74) Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
- (75) Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
- (76) Butibel Elixir, elixir, NDC 00037-0044: butabarbital sodium 3 mg/ml;
- (77) Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
- (78) Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
- (79) Cafegot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
- (80) Cafegot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
- (81) C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
- (82) Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg;
- (83) Charspast, tablet, NDC 00377-0500: phenobarbital 16.20 mg;
- (84) Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg;
- (85) Chlordiazepoxide HCl 5 mg and Clidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazepoxide HCl 5 mg;
- (86) Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg;
- (87) Chlordiazepoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide HCl 5 mg;
- (88) Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg;
- (89) Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazepoxide HCl 5 mg;
- (90) Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCl 5 mg;
- (91) Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg;
- (92) Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg;
- (93) CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
- (94) Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
- (95) Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
- (96) Dilantin with Phenobarbital 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
- (97) Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
- (98) Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
- (99) Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
- (100) Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
- (101) Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;
- (102) Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml;
- (103) Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
- (104) Donnatal No 2, tablet, NDC 00031-4264: phenobarbital 32.40 mg;
- (105) Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg;
- (106) Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
- (107) Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
- (108) E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg;
- (109) Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
- (110) Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
- (111) Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
- (112) EQUI-CET Tablets, tablet, NDC 57779-0111: butalbital 50 mg;
- (113) Ergocaff-PB Tablets, tablet, NDC 00536-3801: pentobarbital sodium 30 mg;
- (114) Esgic Capsules, capsule, NDC 00456-0631: butalbital 50 mg;
- (115) ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg;
- (116) Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
- (117) Espasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg;
- (118) Ezol, capsule, NDC 45985-0578: butalbital 50 mg;
- (119) Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg;
- (120) Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
- (121) FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg;

- (122) Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
 (123) G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
 (124) G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
 (125) Gustase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg;
 (126) Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
 (127) Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg;
 (128) Hyosophen Capsules, capsule, NDC 00536-3926: phenobarbital 16 mg;
 (129) Hyosophen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg;
 (130) Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg;
 (131) Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;
 (132) IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg;
 (133) ISOCET Tablets, tablet, NDC 00536-3951: butalbital 50 mg;
 (134) Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml;
 (135) Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml;
 (136) Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg;
 (137) Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
 (138) Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
 (139) Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml;
 (140) Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
 (141) Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
 (142) Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
 (143) Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
 (144) Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
 (145) Librax, capsule, NDC 00140-0007: chlordiazepoxide HCl 5 mg;
 (146) Lufyllin-EPG Elixir, elixir, NDC 00037_0565: phenobarbital 1.60 mg/ml;
 (147) Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg;
 (148) Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
 (149) Margesic Capsules, capsule, NDC 00682-0804: butalbital 50 mg;
 (150) Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg;
 (151) Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg;
 (152) Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg;
 (153) Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg;
 (154) Micomp-PB Tablets, tablet, NDC 55053-0525: pentobarbital sodium 30 mg;
 (155) Milprem-200, tablet, NDC 00037-5501: meprobamate 200 mg;
 (156) Milprem-400, tablet, NDC 00037-5401: meprobamate 400 mg;
 (157) Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
 (158) Mudrane GG Elixir, elixir, NDC 00095-0053: phenobarbital 0.50 mg/ml;
 (159) Mudrane GG Tablets, tablet, NDC 00095-0051: phenobarbital 8 mg;
 (160) Pacaps Capsules, capsule, NDC 10892-0116: butalbital 50 mg;
 (161) Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
 (162) Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
 (163) Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
 (164) PB Phe-Bell, tablet, NDC 12908-7006: phenobarbital 16.20 mg;
 (165) Phedra C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg;
 (166) Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg;
 (167) Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
 (168) Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
 (169) Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
 (170) Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
 (171) PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
 (172) PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
 (173) Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
 (174) Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
 (175) Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;
 (176) Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
 (177) Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
 (178) Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
 (179) Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
 (180) Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg;
 (181) Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
 (182) Rexatal Tablets, tablet, NDC 00478-5477: phenobarbital 16.52 mg;
 (183) Rogesic Capsules, capsule, NDC 31190-0008: butalbital 50 mg;
 (184) Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
 (185) Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
 (186) Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
 (187) Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
 (188) Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
 (189) Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;
 (190) Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
 (191) Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
 (192) Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
 (193) Spasmin, tablet, NDC 00115-4652: phenobarbital 15 mg;
 (194) Spastemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
 (195) Spastemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
 (196) Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
 (197) Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
 (198) Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
 (199) Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
 (200) Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
 (201) Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
 (202) Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
 (203) T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
 (204) T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg;
 (205) Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
 (206) Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
 (207) Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
 (208) Theophylline Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;
 (209) Triad, tablet, NDC 00785-2306: butalbital 50 mg;
 (210) Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- mg;
(211) Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
(212) Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
(213) Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
(214) Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
(215) Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
(216) Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg; and
(217) Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dana Droz

(1) Type and number of entities affected: 30,000 health care professionals including pharmacists, physicians, dentists, veterinarians and nurses in the Commonwealth are affected by this administrative regulation.

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

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

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by these amendments.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the amendment merely adds one product to the list.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by these amendments.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received related to this issue.

(b) Kentucky: No comments received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because additional record-keeping would be required of health professionals if the product is not listed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those products included in this regulation.

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

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, controls on this product will be more stringent than federal requirements, which could inhibit availability to citizens of the Commonwealth.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242 and 21 CFR 1308.32.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241 and 21 CFR 1308.32.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed by the amendments.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

904 KAR 2:001. Definitions.

RELATES TO: KRS 205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 406.021, 406.025, 15 USC 1673(b), 31 USC 7502, 42 USC 651 et seq., 1998 Ky. Acts ch. 426 [EO 96-862, PL 104-193]

STATUTORY AUTHORITY: KRS 194.050, 205.710-205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731 [EO 96-862, PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 provides that the Cabinet for Families and Children administer the Child Support Program (CSP). [Is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the

Commonwealth. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

- (1) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by a noncustodial parent, or obligor.
- (2) "Assignment of rights" means the written transfer of rights to any child support, any medical support, or spousal support [maintenance] obligation to the state.
- (3) "Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.
- (4) "Authority to collect" means the nonpublic assistance custodial parent's authorization for the Cabinet for Families and Children to collect child support, medical support, or spousal support [maintenance] owed on behalf of the family for whom the cabinet is providing child support services.
- (5) "Central registry" means a centralized office within the state agency responsible for:
 - (a) Receiving and distributing an incoming interstate request; and
 - (b) Responding to an inquiry received from another state regarding an interstate case.
- (6) "Cold check" means insufficient funds for the check tendered, stop payment order on the check tendered or closed account.
- (7) "CSEP" means the Child Support Enforcement Program.
- (8) "Custodial parent" means either a mother or father of a dependent child who is living in the home with the child.
- (9) "Default" means the noncustodial parent's, or obligor's, failure to return a financial statement or to keep an appointment, and the noncustodial parent's, or obligor's, income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.
- (10) "Dispute hearing" means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.
- (11) "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection to the state and federal government for the reimbursement of the share of the K-TAP assistance payment to the family, or money expended for a child in the custody of the state, [foster care].
- (12) "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.
- (13) "Excess collections" means the amount of the collection which exceeds the monthly obligation amount.
- (14) "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as described in 1998 Ky. Acts ch. 255, sec. 4 and 20.
- (15) "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence or a state in which a proceeding is filed for forwarding to a responding state.
- (16) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program means a money payment program for children who are deprived of parental support or care due to:
 - (a) Death, continued voluntary or involuntary absence, physical or mental incapacity of a parent; or
 - (b) Unemployment of at least one (1) parent when both parents are in the home.
- (17) "Location" means the determination of a parent's location, income, assets, property or debt as provided by 1998 Ky. Acts ch. 255, sec. 8.
- (18) "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.
- (19) "Maintenance" means a legally enforceable obligation assessed against an individual for the support of a spouse or former

spouse who is living with a child or children for whom the individual also owes support.]

(19) "Noncustodial parent, or obligor" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(20) "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the noncustodial parent, or obligor, of the child support and medical support obligation and of the noncustodial parent's, or obligor's right to request a hearing.

(21) "Nonparental custodian" means:

(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or

(b) Any other person or entity that may have standing to request services on behalf of a child.

(22) "Obligor" means that individual who is ordered to pay child support, spousal support, medical support, or health care coverage.

(23) "Offset" means to set aside federal or state, or both, income tax refunds or nonexempt federal payments due a noncustodial parent, or obligor, as a means of collecting past-due child support.

(24) "Order and notice to withhold income for child support [earnings]" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(25) "Preoffset notice" means a letter notifying a noncustodial parent, or obligor, [an absent parent] who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, [or] state tax refund intercept only, passport denial or revocation, administrative offset of nonexempt federal payments, offset of lottery winnings, and to certified consumer credit reporting agencies.

(26) "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.

(27) "Public assistance" means the receipt of K-TAP, including child care or work subsidies and vouchers; Medicaid; or foster care benefits.

(28) "Responding state" means the state that is managing the child support case received from an initiating state or a state to which a proceeding is forwarded for filing.

(29) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children of that individual, even if child support is not part of the order.

(30) "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Families and Children.

(31) "Voluntary acknowledgement of paternity forms" are the forms [is the form] by which a mother and putative father voluntarily agree to the parentage of a child as specified by 1998 Ky. Acts ch. 255, KRS 213.046, 405.430, 406.021 and 406.025.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502)

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: This administrative regulation clarifies terminology utilized within the Child Support Program and for related judicial and administrative actions. Some definitions are being expanded in order to harmonize with statutory requirements of 1998 Ky. Acts ch. 101, chs. 255 and 255. It is possible that the expanded definitions of "income", "spousal support" and "location" of assets could result in increased child support collections.

(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 public comments received. No public hearing was held on the NOI and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held on the NOI and no public comments were received.

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

1. First year following implementation: 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: It is possible that the expanded definitions of "income", "spousal support" and "location" of assets could result in increased child support collections.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No fiscal impact.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held on the NOI and no public comments were received.

(b) Kentucky: No public hearing was held on the NOI and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because of the necessity to harmonize with statutory language.

(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 expanded definitions of "income" and "spousal support" could result in more child support being collected. The expanded definition of "location" could result in more assets being located and thus more collections.

(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. The purpose of the regulation amendment is only for clarification of terminology to harmonize with statute and comply with federal regulation.

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 gov-

ernment? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Contracting officials may be able to identify and thus withhold more income and collect more child and spousal support.

3. State the aspect or service of local government to which this administrative regulation relates. Officials who contract to perform child support enforcement activities could be indirectly affected in a positive way resulting in increased collections.

4. How does this administrative regulation affect the local government or any service it provides? These expanded definitions could enable local contracting officials to more effectively collect child support

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq. and the Uniform Interstate Family Support Act.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation identifies and defines terms utilized by the cabinet in administrative regulations pertaining to the Child Support Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State standards are not more restrictive than federal language.

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

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

904 KAR 2:020. Child Support [Enforcement] Program: confidentiality, program administration contracts, and [cooperative] agreements.

RELATES TO: KRS 205.175, 205.712, 205.800, 45 CFR 303.21, 303.105, 303.107, 302.34

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 205.990, 405.520, 406.035, 42 USC 651 et seq., 1998 Ky. Acts ch. 255, 426, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.710 to 205.800 provide that the Cabinet for Families and Children [Human Resources shall] administer the Child Support [Enforcement] Program (CSP). [GSEP] in accordance with KRS 205.710 to 205.800. The cabinet shall make efforts to establish paternity and secure support from parents of children receiving public assistance as a result of desertion, abandonment, birth out-of-wedlock, and for other children on application. KRS 205.795 and 405.520 empower the secretary to adopt administrative regulations pertaining to the administration of the GSEP.] This administrative regulation specifies the procedures for safeguarding information and entering into cooperative agreements.

Section 1. Safeguarding Information. When the cabinet determines there is reasonable cause to believe evidence of domestic violence or child abuse, records shall not be open or published. The use or disclosure of information concerning an applicant or recipient of CSP services [GSEP] shall be limited to:

(1) The administration of the CSEP or other federal or federally assisted program which provides assistance or services directly to individuals on the basis of need; or

(2) An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in subsection (1) of this section.

Section 2. Program Administration Contracts. [Cooperative Agreements:] (1) As permitted by KRS 205.712(4) to [and] 205.800, program administration contracts [cooperative agreements] initiated by the cabinet with local officials shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSP [CSEP];
(b) Specify clear and definite standards which meet federal requirements;

(c) Specify financial reimbursement arrangements including:
1. Budget estimate;
2. Covered expenditures;
3. Methods of determining costs; and
4. Billing procedures for the child support agency;
(d) Specify record maintenance and format requirements;
(e) Contain appropriate reporting requirements;
(f) Contain the requirements for compliance with 31 USC 7502;
(g) Provide the beginning and end dates of the program administration contract, cooperative agreement, review or renewal provisions, and termination circumstances; and
(h) Provide audit criteria.

(2) When officials contract [enter into an agreement] with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and
(b) Specified in the contract [cooperative agreement].
(3) The officials shall provide the cabinet in timely fashion statistical information concerning CSP [CSEP] activities as prescribed by the cabinet and specified in the contract [cooperative agreement].
(4) If no contract [agreement] is executed, referrals for child support activities may be made to local law enforcement officials in accordance with the official's statutory obligations, but the officials shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. Agreements with Financial Institutions. The cabinet shall enter into agreements with financial institutions pursuant to 1998 Ky. Acts ch. 255, sec. 5.

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: This administrative regulation specifies requirements for confidentiality, administration contracts and agreements. The regulation is being revised to include requirements for safeguarding information when there is reason to believe evidence of domestic violence or child abuse. It also includes the implementation of agreements between the child support agency and financial institutions for the provision of financial data matches on noncustodial parents', or obligors', accounts. As many as 300 banking institutions may be involved. This number does not include credit unions, brokerage firms etc. which could also be affected as well.

(2) Direct and indirect costs or savings on 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 public comments received. No public hearing was held on the NOI and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and the NOI and no public comments were received.

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
- (a) Direct and indirect costs or savings:

1. First year: The provisions of this amendment are estimated to create a savings of \$254,900 in FY 99. This is based on revenues (100% state funds) estimated at \$516,000 and total expenditures of \$768,000. Since expenditures are a 34%/66% match, the state share of expenditures is \$261,120 and the federal share is \$506,880.

2. Continuing costs or savings: The provisions of this amendment are estimated to create a savings of \$273,500 in FY 2000. This is based on revenues (100% state funds) estimated at \$464,400 and total expenditures of \$561,600. Since expenditures are a 34%/66% match, the state share of expenditures is \$199,044 and the federal share is \$370,656.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Net savings of \$254,900 in 1999 and \$273,500 in 2000.

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held on the NOI and no public comments were received.

(b) Kentucky: No public hearing was held on the NOI and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives rejected: Alternative methods were not considered because of the necessity to comply with statutory requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These amendments will make it possible for more assets to be located and thus more child support may be collected. Records on families in domestic violence or child abuse cases will be safeguarded.

(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 that 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. The purpose of the regulation amendment is to allow the cabinet to enter into agreements with financial institutions in order to locate assets and to safeguard records on vulnerable families. Tiering is not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation only affects contracting officials in that the cabinet's agreements with financial institutions may allow officials to locate and withhold obligors' assets for child support. Additionally, former agreements between the cabinet and contracting officials are now

referred to as contracts.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the name of the contract between the cabinet and local officials for the provision of child support services. It also relates to the location of obligor assets.

4. How does this administrative regulation affect the local government or any service it provides? This regulation may allow contracting officials to identify assets and thus collect more child support.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation requires safeguards for records when child abuse or domestic violence are evident. It also provides for the cabinet to enter into agreements with financial institutions for the purpose of locating assets of delinquent obligors. Further, cooperative agreements with contracting officials are redefined as contracts.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State Standards are not more restrictive than federal language.

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

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

904 KAR 2:380. Child Support [Enforcement] Program application process.

RELATES TO: KRS 205.710-205.800, 205.992, [407.040 to 407.480;] 45 CFR 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3, 303.15, 303.30-303.31, 303.70

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 426, EO 98-731 [EO 96-862, PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.710 to 205.800.] KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSP [CSEP] in accordance with federal law and regulations. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

Section 1. Kentucky Transitional Assistance Program (K-TAP) Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with 1998 Ky. Acts ch. 255, sec. 6.

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for K-TAP benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in a K-TAP case, as specified in 904 KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists, he shall have the opportunity to establish his claim according to criteria contained in 904 KAR 2:006, Section 16.

(4) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with 1998 Ky. Acts ch. 255, sec. 8.

(5) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(6) [(5)] Services provided to a K-TAP recipient through the Child Support [Enforcement] Program shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit [notice] from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support, medical support, and spousal support [maintenance] obligations; and

(f) Collection and distribution of:

1. Child support amounts; and

2. Medical support amounts; and

3. Spousal support [Maintenance] if the client is the spouse or ex-spouse.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and disburse [distribute] child support on behalf of children for whom:

(a) The state is making foster care maintenance payments as required by 42 USC 657; and

(b) An assignment of rights has been made.

(2) The [Department for Social Services] worker with responsibility for the foster care child shall:

(a) Cooperate with the child support agency;

(b) Complete and forward the foster care child support referral;

(c) Complete and forward the foster care child support change of status form when changes occur which relate to the child support process; and

(d) Forward copies of court documents pertaining to the child support process.

(3) "Good cause" for nonenforcement of child support for a foster care child [recipient] exists when criteria contained in 904 KAR 2:006, Section 16 are met.

(4) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(5) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with 1998 Ky. Acts ch. 255, sec. 6.

(6) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a foster care referral [from the Department for Social Services].

(7) [(6)] Services available to a foster care recipient shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity;

(c) Establishment of child support and and [or] medical support obligations;

(d) Enforcement of child support and medical support obligations;

(e) Review and modification of child support and [or] medical support orders when appropriate; and

(f) Collection and disbursement to the social services agency for distribution of child support payments.

Section 3. Medicaid Only Process for Child Support Services. (1) When a public assistance referral is received, the child support agency shall obtain the following information:

(a) The Medicaid case number;

(b) The name of the noncustodial parent, or obligor;

(c) The Social Security number of the noncustodial parent, or obligor;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

- (d) The name and Social Security number of the child;
- (e) The home address of the noncustodial parent, or obligor; and
- (f) The name and address of the noncustodial parent's, or obligor's, place of employment.

(2) An application for Medicaid shall include an assignment of rights for medical support, as specified in 907 KAR 1:011, Section 9 [8].

(3) Except for a custodial parent who is pregnant or in her post partum period as specified in 907 KAR 1:011, Section 10 [9], a custodial parent shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(4) If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim according to criteria contained in 904 KAR 2:006, Section 16.

(5) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(6) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with 1998 Ky. Acts ch. 255, sec. 8.

(7) The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of a referral from a public assistance agency.

(8) (7) Services available to Medicaid only clients shall include:

- (a) Location of the noncustodial parent, or obligor [absent parent];
- (b) Establishment of paternity;
- (c) Establishment of medical support obligations;
- (d) Enforcement of medical support obligations;
- (e) Review and modification of medical support aspects of support obligations when appropriate;
- (f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;
- (g) Collection and disbursement of medical support payments if ordered.

Section 4. Services to an Individual not Receiving K-TAP. (1) Child support services shall be made available to any individual who:

- (a) Assigns rights for medical support only; or
 - (b) Files a nonpublic assistance application for services with the child support agency; or
 - (c) Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or
 - (d) Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or
 - (e) Is receiving Medicaid only nonfoster care services.
- (2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

(a) If the request is made in person, the packet shall be provided the same day.

(b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.

(2) The application packet shall include:

- (a) Nonpublic assistance application form;
- (b) Nonpublic assistance services fact sheet;
- (c) Civil rights information pamphlet.

(3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form.

(4) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:

- (a) Inform the client that medical support establishment and enforcement are [is] available; and
- (b) Obtain the following information:
 1. The name of the noncustodial parent, or obligor;
 2. The name and Social Security number of the noncustodial parent, or obligor;

3. The Social Security number of the child;

4. The home address of the noncustodial parent, or obligor; and

5. The name and address of the noncustodial parent's, or obligor's, place of employment.

(5) If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall take an assignment of support rights and authority to collect from an individual receiving nonpublic assistance child support services as prescribed by KRS 205.720(1).

(6) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(7) The nonpublic assistance application fee shall be a flat one (1) dollar fee. The CSP shall absorb the cost of the fee. [may not exceed twenty-five (25) dollars and shall be determined by an income fee scale:

(a) The income fee scale shall be based on the previous year's net income:

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income:

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
\$0 to 2,000	\$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00]

Section 6. Parent Locator Service and Associated Fee for Service.

(1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate a noncustodial parent, or obligor, or a noncustodial parent's, or obligor's sources of income, [and] assets, property and debt when location is necessary to take the next appropriate action. Location shall be attempted for all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, unless the cabinet has reason to believe allegations of child abuse or domestic violence as defined in 904 KAR 2:006 and in accordance with 1998 Ky. Acts ch. 255, sec. 8.

(2) Location services may be provided upon application by a noncustodial parent as described in KRS 205.730.

(3) Location services shall be provided upon the request of a putative father only for the purpose of establishing paternity pursuant to 1998 Ky. Acts ch. 255, sec. 8.

(4) Location services shall be provided in parental kidnapping cases to enforce state and federal laws and to make or enforce a child custody or visitation order as required by 1998 Ky. Acts ch. 255, sec. 8.

(5) For a nonpublic assistance case in which location is the only service requested, a one (1) dollar application [ten (10) dollar nonrefundable] fee shall be charged. For parental kidnapping requests, a one (1) dollar application [twenty (20) dollar nonrefundable] fee shall be charged. The CSP shall absorb the cost of these application fees.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to interstate child support cases the same services available to intrastate cases. These services shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity;
- (d) Establishment of a child support obligation for:
 1. A K-TAP or foster case;
 2. A Medicaid only case with the consent of the recipient; and
 3. A nonpublic assistance case.
- (e) Establishment of medical support obligation for:
 1. A public assistance case; or

2. A nonpublic assistance case with the consent of the applicant.
 - (f) Enforcement of support orders;
 - (g) Review and modification of child support or medical support orders, or both, if appropriate; and
 - (h) Collection and distribution of current and past due support payments.
- (2) To enforce child support laws between states the child support agency shall:
 - (a) Receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases; and
 - (b) Establish an interstate central registry responsible for:
 1. Receiving, processing and distributing incoming interstate requests; and
 2. Responding to inquiries received from other states on interstate cases.
 - (c) Issuing administrative subpoenas to any individual or entity to secure information needed to establish, modify or enforce a support obligation pursuant to 1998 Ky. Acts ch. 255, sec. 5 and 22.
 - (3) Within ten (10) working days of receipt of an interstate case, the central registry shall:
 - (a) Ensure review of submitted documentation for completeness;
 - (b) Forward the case to the appropriate functional unit for case processing;
 - (c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed; and
 - (d) Inform the initiating state of where the case has been forwarded for action.
 - (4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.
 - (5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.
 - (6) The initiating agency state shall:
 - (a) Use long-arm statutory authority to establish paternity and child support if statutory authority exists;
 - (b) Within twenty (20) calendar days of determining that the non-custodial parent, or obligor, is in another state, forward any necessary information and the case to the responding state's central registry for action.
 - (c) Provide the agency in the responding state sufficient and accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.
 - (d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.
 - (e) Notify the agency in the responding state within ten (10) working days of receipt of new information by submitting updated forms or additional information.
 - (f) Send a request for a review of a child support order to another state within twenty (20) calendar days of determining that a request for review of the order is needed.
 - (7) The responding state agency shall establish and use caseload procedures which ensure provision of necessary services including maintenance of case records. The agency shall periodically review program performance on interstate cases to evaluate the effectiveness of responding state procedures.
 - (8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:
 - (a) Intake;
 - (b) Establishment of paternity;
 - (c) Establishment of a child support obligation or ~~and~~ medical support obligation, or both;
 - (d) Location;
 - (e) Collection of current and past due child support, medical support, and spousal support ~~[maintenance]~~ payments;
 - (f) Certification for ~~[federal or]~~ state tax refund intercept, when requested by the initiating state (or both);
 - (g) Monitoring;
 - (h) Enforcement of child support obligations, medical support obligations, and spousal support obligations ~~[maintenance]~~; and
 - (i) Review and modification of child support and medical support obligations.

(9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested or if the documentation does not include adequate location information (and documentation is adequate); or

(b) If documentation is inadequate:

1. Notify the initiating state of necessary additions or corrections; and

2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state and the central registry of its action.

(d) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different state, the agency shall return the forms [work] and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the noncustodial parent, or obligor, [absent parent] has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary services as it would in an intrastate case by:

1. Establishing paternity and obtaining judgment for prenatal costs, birthing expenses, and genetic tests upon establishment;

2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing cases for possible modification;

4. Processing and enforcing orders referred by another state;

5. Collecting and monitoring any support payment from a non-custodial parent, or obligor and forwarding collections to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or identify that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of formal hearings to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the responding [initiating] state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing state agency interstate cases. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of genetic tests from the party who denied paternity.

(b) ~~[Recovery of these costs may also be shared by each party as long as the total amount recovered does not exceed the actual costs of the genetic tests.]~~

(e) If costs are recovered, the responding state shall reimburse the initiating state.

(c) ~~[(d)]~~ The responding state shall identify fees and costs deducted from support payments when forwarding payments to the initiating state.

Section 8. Public Awareness. The child support agency shall publicize the availability of its services and encourage their use pursuant to 1998 Ky. Acts ch. 255, sec. 5. These efforts may include public service announcements, posters, press releases, videos, annual reports, newsletters, mail inserts, pamphlets and letters.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KA-125, (11/96 Edition), Cabinet for Families and Children;

(b) KA-125 Supplement A, (11/96 Edition), Cabinet for Families and Children;

(c) KA-125 Supplement B, (11/96 Edition), Cabinet for Families and Children;

(d) KA-125, Supplement C, (11/96 Edition), Cabinet for Families and Children;

- (e) PA-121, (8/97 Edition), Cabinet for Families and Children;
 (f) CS-11 "Authorization and Acknowledgment of No Legal Representation", (10/98 Edition), Cabinet for Families and Children;
 (g) CS-33 "Non-K-TAP Application", (2/97 Edition), Cabinet for Families and Children;
 (h) CS-37 "Non-K-TAP IV-D Services Fact Sheet", (10/98 Edition), Cabinet for Families and Children;
 (i) DSS-1260 "Title IV-E and Child Support Referral", (11/96 Edition), Cabinet for Families and Children;
 (j) DSS-1263 "Title IV-E and Child Support Change of Status", (11/96 Edition), Cabinet for Families and Children;
 (k) CS-65 "Statement of Income and Resources", (10/98 Edition), Cabinet for Families and Children;
 (l) CS-98 "General Testimony", (5/98 Edition), Cabinet for Families and Children;
 (m) CS-100 "Uniform Support Petition", (5/98 Edition), Cabinet for Families and Children;
 (n) CS-103 "Child Support Enforcement Transmittal #1 - Initial Request", (5/98 Edition), Cabinet for Families and Children;
 (o) CS-109 "Custodial Parent Termination Affidavit", 2/97 Edition, Cabinet for Families and Children;
 (p) CS-136 "Health Insurance Information Request", (Edition 2/97), Cabinet for Families and Children; and
 (q) CS-140 "Assignment of Rights and Authorization to Collect Support", (10/96 Edition), Cabinet for Families and Children.
- (2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Forms necessary to establish a child support or medical support case through the Division of Child Support Enforcement are incorporated effective March 15, 1995. These forms include:
- (a) KA-125, revised 11/96;
 - (b) KA-125 Supplement A, revised 11/96;
 - (c) KA-125 Supplement B, revised 11/96;
 - (d) KA-125 Supplement C, revised 11/96;
 - (e) PA-121, revised 12/96;
 - (f) CS-11, revised 12/96;
 - (g) CS-33, revised 2/97;
 - (h) CS-37, revised 2/97;
 - (i) DSS-1260, revised 11/96;
 - (j) DSS-1263, revised 11/96;
 - (k) CS-65-65.1, revised 2/97;
 - (l) CS-98, revised 2/97;
 - (m) CS-100, revised 2/97;
 - (n) CS-103, revised 2/97;
 - (o) CS-109, revised 2/97;
 - (p) DS-136, revised 10/96;
 - (q) CS-140, revised 10/96.
- (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.]

DIETRA PARIS, Commissioner
 VIOLA P. MILLER, Secretary
 CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available and the process for interstate child support services. The changes incorporated within this regulation will affect interstate child support enforcement cases. It is estimated that approximately 10,000 cases require interstate enforcement at least annually. All future nonpublic assistance applicants will be affected by this amendment.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: No increase in reporting or paperwork is anticipated as UIFSA (Uniform Interstate Family Support Act) procedures will replace existing URESA (Uniform Reciprocal Enforcement of Support Act) procedures, when applicable.

2. Second and subsequent years: No increase in reporting or paperwork is anticipated as UIFSA procedures will replace existing URESA procedures.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The total cost for provisions included in this amendment are estimated at \$242,900 for FY 99. These costs are based on revenues (100% state funds) of \$62,800 for FY 99 and expenditures of \$180,100 for FY 99. Expenditures include both federal and state match (\$97,300/\$50,200) for training and state dollars only (\$32,600) for application fees. The total state share for these provisions is estimated at \$104,200 for FY 99.

2. Continuing costs or savings: The total cost for provisions included in this amendment for FY 2000 are \$98,800. These costs are based on revenues (100% state funds) of \$62,800 for 2000 and expenditures of \$36,000 for 2000. Expenditures include both federal and state match (\$2,100/\$1,100) for training and state dollars only (\$32,800) for application fees. The total state share for these provisions is estimated at \$55,300 for FY 2000.

3. Additional factors increasing or decreasing costs: The non-public assistance application fee for child support services, formerly based on applicant income and with a \$25 dollar cap, has been reduced to \$1 dollar and will be paid by the Child Support Program.

(b) Reporting and paperwork requirements: There is no anticipated increase in reporting or paperwork as UIFSA policies will replace existing URESA (Uniform Reciprocal Enforcement of Support Act) policies, when applicable.

(4) Assessment of anticipated effect on state and local revenues: Revenues will decrease \$62,800 annually.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the increased state portion of costs is agency dollars from an anticipated increase in agency collections.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: As the implementation of UIFSA is mandatory, there are no alternatives to consider.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Im-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

plementation of this administrative regulation will affect interstate child support cases and will result in a more effective means of enforcing child support orders across state lines. Elimination of the application fee will benefit all nonpublic assistance applicants.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation will have a detrimental effect on the state program and its funding.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement provisions of 42 USC 651 et seq. will result in a loss of federal funds. Further, enforcement of interstate child support cases will not be as effective without the implementation of 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? No. Tiering was not applied because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains requirements for the contracting officials of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. Contracting officials for the child support program shall receive UIFSA training and shall provide modification reviews requested for interstate cases according to the Uniform Interstate Family Support Act.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide child support program services as specified by contract, including the review of interstate cases for modification according to the Uniform Interstate Family Support Act.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 666(f) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available and the interstate process.

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 Community Based Services Division of Policy Development (Amendment)

904 KAR 2:390. Child Support [Enforcement] Program paternity establishment.

RELATES TO: KRS 406.011 to 406.180, 45 CFR 302.31, 303.5, 302.33

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq.,

1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731 [EO-96-862, PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support [Enforcement] Program in accordance with KRS 205.710 to 205.800. [The agency shall establish paternity when necessary to secure support for a child. KRS 205.795 provides that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal regulations. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation specifies the requirements of the agency in the establishment of paternity.

Section 1. Requirement for Paternity Establishment. The cabinet [child support agency] shall bring action, as specified in KRS 406.21(1) and (3) if:

(1) The child is born out of wedlock; and

(2) An assignment of rights to the cabinet [child support agency] is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet [Agency] Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet [agency] shall open a case pending determination of good cause.

(a) If "good cause" for failure to cooperate is determined, the child support case shall be closed;

(b) Good cause may be found to exist if criteria contained in 904 KAR 2:006, Section 16(4) are met.

(c) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(3) For all cases referred to the cabinet [child support agency] in which paternity has not yet been established, the cabinet shall [agency], within ninety (90) days of locating the alleged father or custodial parent or successful service of process, whichever occurs later [shall]:

(a) Obtain a voluntary acknowledgment of paternity as specified by 1998 Ky. Acts ch. 255, sec. 13-15;

(b) File for establishment of paternity [child support, and, if necessary, paternity];

(c) [(b)] Complete service of process to establish paternity; or

(d) [(e)] Document unsuccessful attempts to serve process, whichever occurs later.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months; or

(c) The signature date of the Voluntary Acknowledgement of Paternity Form as specified by KRS 213.046, 406.021 and 406.025.

(5) The voluntary acknowledgment of paternity may be rescinded in accordance with provisions of 1998 Ky. Acts ch. 255, sec. 26.

(6) Bills for testing, pregnancy, and childbirth shall be considered as evidence without requiring third-party testimony pursuant to 1998 Ky. Acts ch. 255, sec. 26.

(7) [Upon order by a court of competent jurisdiction,] The cabinet [child support agency] shall recover from an alleged [a] noncustodial parent, or obligor, a reasonable fee for performing genetic tests pursuant to 1998 Ky. Acts ch. 255, sec. 5.

(8) The cabinet shall request denial, suspension or revocation of licenses or certifications for failure to comply with a subpoena or warrant relating to paternity pursuant to 1998 Ky. Acts ch. 255, sec. 5, and ch. 417, sec. 1.

Section 3. Incorporation by Reference. [Identification of Laboratories which perform Genetic Tests. (1) The child support agency shall identify laboratories which perform legally and medically acceptable genetic tests which tend to include or exclude an alleged father in paternity proceedings.

(2) The child support agency shall provide a list of laboratories

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

identified in subsection (1) of this section upon request to:

- (a) Courts;
- (b) Law enforcement officials; and
- (c) The general public.

~~Section 4. Material Incorporated by Reference:~~ (1) The form necessary for interstate paternity establishment services provided through the Division of Child Support [Enforcement] is incorporated. This form is the CS-99.1, -99.2, -99.3, (5/98 Edition) [revised February 1997].

(2) This material [form] may be inspected, [and] copied or obtained at the Department for Community Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: This administrative regulation is amended to require the suspension, denial or revocation of licenses or certifications for failure to comply with a paternity subpoena or warrant. The revision also provides for the rescission of voluntarily acknowledged paternity that copies of all legal proceedings be provided to all concerned parties. There is no way to determine the number of cases which will be affected by these actions.

(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 public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: Additional reporting or paperwork requirements will be realized when noncustodial parents, who voluntarily acknowledged paternity, rescind the acknowledgement.

2. Second and subsequent years: Additional reporting or paperwork requirements will be realized for noncustodial parents who voluntarily acknowledge paternity and then rescind the acknowledgement.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The total cost for providing copies of proceedings is \$141,000 in FY 99. The state match rate is 34%/66%. The state portion of providing copies of proceedings in FY 1999 is \$47,900.

1. Continuing costs or savings: The total cost expenditure for

providing copies of proceedings is \$145,600 in FY 2000. The state match rate is 34%/66%. The state portion of providing copies of proceedings in 2000 is \$49,500.

2. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paternity rescission could result in more paperwork for agency staff.

(4) Assessment of anticipated effect on state and local revenues: Actual cost to the state is \$47,900 in 1999 and \$49,500 in 2,000.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66% agency funding-34% The cost is covered by the enacted increase in the agency 1999-2000 budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative adjustments were not considered as changes to the regulations are mandated by federal regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: 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. Tiering was not applied because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation requires the cabinet to request denial, suspension or revocation of licenses and certifications for failure to comply with a paternity subpoena or warrant. Contracting officials could experience greater compliance with paternity subpoenas and warrants. This regulation allows for the rescission of voluntary paternity acknowledgement which could result in more paperwork. The requirement to provide copies of legal proceedings to all concerned parties may also result in more paperwork.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment of paternity cases for child support program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation revision could improve the officials' effectiveness in paternity establishment, collection and enforcement. The paternity rescission requirement could result in more paperwork for contracting officials and local registrars. The requirement concerning copies of proceedings will cause additional paperwork.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq.

2. State compliance standards. This administrative regulation requires the cabinet to request the denial, suspension or revocation

of licenses and certifications after failure to comply with a subpoena or warrant relating to paternity or child support proceedings. It also requires that copies of all legal proceedings be provided to the parties and allows for the rescission of voluntary paternity acknowledgement.

3. Minimum or uniform standards contained in the federal mandate. Same as number 2 above.

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 Community Based Services
Division of Policy Development
(Amendment)

904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS 13B.170, 194.050, 205.710 - 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 255, 417, 426, EO 98-731 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support [Enforcement] Program in accordance with the provisions of KRS 205.710 to 205.800. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] This administrative regulation specifies the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction as determined by 1998 Ky. Acts ch. 417; or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, [Commonwealth of Kentucky] Worksheet for Monthly Child Support Obligation, for a child support obligation administratively established by the cabinet [child support agency staff].

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases and [referred to the child support agency; or] for those nonpublic assistance cases for which child support services are being provided, the cabinet [agency] shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, when:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, when:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet [child support agency] shall:

(a) Complete service of process; or

(b) Document unsuccessful attempts to serve process.

(7) When service of process has been completed, the cabinet [child support agency] shall, if necessary:

(a) Establish a child support obligation; or

(b) Establish paternity; or

(c) Send a copy of any legal proceedings to the parties within fourteen (14) days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet [agency] shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or [and] medical support obligation, or both when:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, [parent] resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the Kentucky child support guideline as contained in KRS 403.212, or subsection (4) of this section.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the custodial parent:

1. A financial questionnaire;

2. A child care expense questionnaire; and

3. A medical support verification request.

(b) Send to the nonparental custodian:

1. A nonparental custodian information request; and

2. A medical support verification request, if appropriate.

(c) Send to the noncustodial parent, or obligor:

1. An appointment letter;

2. A financial questionnaire;

3. A child care expense questionnaire; and

4. A medical support verification request.

(d) Send to the employer of the custodial parent, the nonparental custodian, or the noncustodial parent, or obligor, or both if both [all-if all] are employed, a wage information request.

(e) Issue an administrative subpoena to utility and cable companies; financial institutions; the custodial parent; the nonparental custodian; the noncustodial parent, or obligor; or the employer, pursuant to 1998 Ky. Acts ch. 255, sec. 5.

(f) When appropriate, request information from a certified consumer reporting agency as prescribed in 1998 Ky. Acts ch. 255, sec. 11.

(4) In a default case, the cabinet shall set the obligation based on the K-TAP standard of need for the child or children as specified in 904 KAR 2:016, Section 8(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall:

(a) Serve the notice of monthly support obligation upon the noncustodial parent, or obligor, in accordance with KRS 405.440; and

(b) Provide the other concerned parties with a copy of the notice within fourteen (14) days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice pursuant to 1998 Ky. Acts ch. 255, sec. 5.

(7) In accordance with KRS 405.430(3), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The cabinet [child support agency] shall have a written and publicly available review and adjustment plan for child support orders.

(2) The cabinet may review and adjust a child support obligation:

(a) Upon the request of the cabinet; or

(b) Upon the request of either parent, ~~child support agency shall review all public assistance cases which are thirty-six (36) months old or older. Subsequent reviews shall occur at thirty-six (36) month intervals based on the date:~~

- (a) ~~The order was adjudicated;~~
- (b) ~~It was determined the order should not be adjusted; or~~
- (c) ~~Upon which the post review challenge period ended;~~

(3) All public assistance and nonpublic assistance cases shall be reviewed at the request of either parent, nonparental custodian, or any other person or entity that may have standing to request a modification subject to the child support order.

(4) The ~~cabinet~~ ~~child support agency~~ shall notify each parent subject to an order of the right to request a review every thirty-six (36) months.

(5) Within fifteen (15) calendar days of receipt of a review request, the ~~cabinet~~ ~~child support agency~~ must determine if a review shall be conducted.

(6) The ~~cabinet~~ ~~child support agency~~ shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the ~~cabinet~~ ~~child support agency~~ shall:

- (a) Send a notice to each parent that a review will be conducted;
- (b) Conduct the review;
- (c) Send a notice of the result; and
- (d) Modify the order or determine that there will be no change and notify the noncustodial parent, or obligor;
- (e) Provide the other concerned parties with a copy of the modified notice within fourteen (14) days of the noncustodial parent's, or obligor's, refusal or acceptance of the modified notice pursuant to 1998 Ky. Acts ch. 255, sec. 5.

Section 4. Appeal Procedures. (1) A parent, or any other person or entity that has standing or his authorized representative may request and be granted relief by a dispute hearing in accordance with KRS Chapter 13B.

(2) A request shall be made to the ~~cabinet~~ ~~child support agency~~:

- (a) In writing;
- (b) In person; or
- (c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

- (a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;
- (b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or
- (c) Made within thirty (30) days of receipt of a modified notice of monthly support obligation;

(d) Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. Good cause reasons shall include:

- (a) A parent being away from home during the entire filing period;
- (b) The parent's inability to read the notice of monthly support obligation; or
- (c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or any other person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or any other person or entity having standing to request a modification, or his authorized representative prevails, the

cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or any other person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the ~~area~~ child support office or the Hearing Branch in the Department for Community Based Services, Division of Family Support, Hearing Branch. ~~[Social Insurance, Division of Administrative Review.]~~

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CS-66, "Notice of Monthly Support Obligation", (10/98 Edition), Cabinet for Families and Children; and

(b) CS-71, "Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", (7/94 Edition), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference: (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated. These forms are:

(a) CS-66, revised 2/97; and

(b) CS-71, revised 7/94.

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

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: This administrative regulation specifies the requirements for the establishment, review and modification of child support and medical support orders. Revisions to the regulation will enhance the effectiveness of these efforts but there is no way to determine the number of cases that will be

affected.

(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 public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: The child support agency will experience increased costs in order to automate the identification of cases requiring modification review. This regulation contains services and requirements of the contracting officials, and therefore does affect local governments by requiring that copies of all legal proceedings be sent to all affected parties.

2. Second and subsequent years: Only the continuing cost to provide copies of legal proceedings to all affected parties.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The provisions of this amendment are estimated to create a savings of \$451,500 in FY 99. This is based on revenues of \$522,000 (100% state funds), due to concurrent jurisdictions, and expenditures of \$141,000 (copies of proceedings), \$65,000 (right to review notices), and \$1,300 (advance notices), for a total expenditure of \$207,300. Since expenditures are a 34%/66% match, the state share of expenditures is \$70,482, resulting in a savings of \$451,500 for FY 1999.

2. Continuing costs or savings: The provisions of this amendment are estimated to create a savings of \$481,600 in FY 2000. This is based on revenues (100% state funds) of \$548,100, from concurrent jurisdictions, and expenditures of \$145,600 (copies of proceedings), \$48,400 (right to review notices), and \$1,400 (advance notices) for a total of \$195,400. Since expenditures are a 34%/66% match, the state share of expenditures is \$66,436, resulting in a savings of \$481,600 in FY 2000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: Net savings of approximately \$451,500 for FY 99 and \$481,600 for FY 2000.

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Amendment to regulation is a result of federal mandates of the Personal Responsibility Work Opportunity Responsibility Act.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It is anticipated that child support enforcement efforts will be enhanced thus improving the welfare of custodial parents and children.

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

(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. Tiering was not applied

because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains services and requirements of the contracting officials; and therefore, does affect local governments by requiring copies of all legal proceedings to be provided to all affected parties and by allowing concurrent jurisdictions.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment, review and modification of child support and medical support orders for the child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide copies of all legal proceedings to affected parties and allows for concurrent jurisdiction.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the establishment and modification of child support orders, and medical support orders.

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 Community Based Services Division of Policy Development (Amendment)

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., 1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [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. Cold Check Fee. The cabinet shall charge a cold check fee pursuant to 1998 Ky. Acts ch. 417, sec. 2.

Section 2. Collection of Spousal Support [Maintenance]. Agency efforts shall include collecting spousal support [maintenance] if it meets the definition of "duty of support" in KRS 205.710(5).

Section 3. [2- Methods of] Collection. (1) Income [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 cabinet [child support agency] shall provide for income [wage] withholding without necessity of an amendment or court action to the child support order.

(c) The Child Support Program (CSP) shall establish and maintain an automated state directory of new hires pursuant to 1998 Ky. Acts ch. 255, sec. 41. Data in this directory may be used by the cabinet to complete follow-up studies of clients leaving the welfare rolls.

(d) The transfer of property or income by an obligor to avoid payment to the cabinet shall be considered an indication of fraud pursuant to 1998 Ky. Acts ch. 255, sec. 23.

(e) If a noncustodial parent, or obligor, has more than one (1) child support income withholding order [wage assignment] against him, the cabinet [child support agency] shall allocate and distribute child support as specified by KRS 405.467(7) and (8).

(f) [(d)] If current support and an arrearage amount is owed and is to be paid through an income [a wage] withholding order, [and no specified arrearage payment amount is ordered by the court,] the cabinet shall:

1. Determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent when the order was issued in Kentucky and Kentucky has continuing, exclusive jurisdiction.

2. [(e)] If the noncustodial parent, or obligor, no longer owes a current child support payment, the cabinet shall determine:

- a. [1-] The arrearage payment to be equal to the last court or administratively ordered obligation amount; and

- b. [2-] The frequency of the arrearage payment to be equal to the frequency of the last ordered obligation amount.

3. When Kentucky does not have continuing, exclusive jurisdiction or when the order was not issued in Kentucky, arrearage payments shall be calculated pursuant to 1998 Ky. Acts ch. 101.

(g) [(f)] A noncustodial parent, or obligor, shall not be obligated to pay current support if:

1. Parental rights have been terminated; or

2. All children of a particular order are emancipated.

(h) [(g)] An employee-paid share of the cost of health insurance shall not be deducted if, after child support and spousal support [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.

(i) [(h)] If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(j) [(i)] To comply with the advance notice requirements of KRS 405.467(4), if the address of the noncustodial parent, or obligor, is known, the cabinet [agency] shall send written notification to the noncustodial parent, or obligor, at the same time the withholding order is sent to the employer, labor organization or other source of income: [within fifteen (15) calendar days of the:

1. Request for wage withholding; or

1. If [2- The date] the arrearage of the noncustodial parent, or obligor, is equal to the monthly obligation amount.

2. If the noncustodial parent, or obligor fails to secure ordered health insurance.

(k) [(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.

(l) [(k)] The [advance] notice shall inform the noncustodial parent, or obligor:

1. He has ten (10) days from the date withholding is implemented 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.

3. Ordered health care coverage shall apply to the current employer and any subsequent employer unless the noncustodial parent contests the notice pursuant to KRS Chapter 13B.

(m) [(l)] In addition to the requirements of KRS 405.467(5)-(13)

[(11)], the employer or income source shall be notified, within fifteen (15) days of the request for income [wage] withholding, of the following:

1. The employer or income source shall forward collected child support amounts to the cabinet [child support agency] and collected medical insurance premiums to the health insurance carrier within seven (7) [ten (10)] working days of the date the amount is withheld from the noncustodial parent's, or obligor's wages;

2. The employer or income source shall include on the transmittal to the cabinet [child support agency] the name and Social Security number of the noncustodial parent, or obligor, the cabinet [child support agency] assigned case number and the date the money was withheld;

3. The employer or income source may combine amounts due the cabinet [child support agency] into one (1) payment if the employer identifies by the name, Social Security number, and the cabinet [child support agency] assigned case number the amount attributable to each noncustodial parent, or obligor;

4. The employer or income source 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 forward withheld amounts at least once monthly; and

5. The employer or source of income shall notify the cabinet [child support agency] promptly when the noncustodial parent, or obligor, terminates employment and provide information to the cabinet [agency] as required by KRS 405.465.

(n) [(m)] The noncustodial parent, or obligor, shall keep the cabinet [child support agency] informed of his current employer or source of income and the health insurance policy information, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information.

(o) [(n)] The cabinet [child support agency] shall extend the withholding system to include withholding from income [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.

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.]

(p) [(o)] The cabinet [child support agency] shall terminate income [wage] withholding if there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The cabinet [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 sup-

port 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 cabinet [child support agency] if 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.

(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) spousal support [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 cabinet [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 cabinet [child support agency] verifies the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(b) Past due child support, medical support or spousal support [maintenance] in a nonpublic assistance case shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the cabinet [child support agency] is enforcing the order;

2. The arrearage is no less than \$500 dollars and does not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The cabinet [child support agency] has verified the accuracy of the arrearage and has a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the cabinet [child support agency] shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage is owed on behalf of a child who lives with the client and is a minor as of December 31 of the year in which the case is submitted for offset;

5. ~~The cabinet has determined that there is no public assistance or foster care arrearage owed; [child support agency has calculated an assigned arrearage];~~

6. The cabinet [child support agency] has verified 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 3 [2](3)(b) of this administrative regulation are met and the arrearage is not less than \$150.

Section 4. State Collection and Disbursement System. (1) The CSP shall establish and operate a centralized State Disbursement Unit (SDU) in accordance with 1998 Ky. Acts ch. 255, sec. 5.

(2) The State Disbursement Unit shall collect, record and disburse payments under support orders for:

(a) All Child Support Program cases; and

(b) All non-Child Support Program cases in which a support order was initially issued in the state on or after January 1, 1994, and in which the income of the noncustodial parent or obligor is subject to income withholding.

(3) Effective September 30, 1999, the collection and disbursement system shall include a state case registry of child support orders in accordance with 1998 Ky. Acts ch. 255, sec. 5.

Section 5. [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 State Disbursement Unit in 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 cabinet [child support agency] by the K-TAP agency.

(a) If the family is ineligible for a K-TAP payment, the cabinet [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 8 [6] of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the cabinet [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 cabinet [child support agency] shall:

(a) Reimburse the state for any assistance paid [Determine the collected amount the family would have received]; and

(b) Forward any amount in excess of the assistance paid [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 6. [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 cabinet [child support agency]; and

(2) [Upon receipt by the child support agency, shall be] Disbursed to the foster care agency for distribution.

Section 7. [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 ac-

counts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family:

- (a) Within thirty (30) calendar days of the initial receipt date; or
- (b) When a joint return has been filed collection shall be held by the cabinet for six (6) months prior to being distributed.
- (3) State tax refunds intercepted shall be distributed according to specifications in Section 5, 6, 8 or 10 [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 KRS Chapter 13B [specifications in 904 KAR 2:400, Section 4].

Section 8. [6-] Treatment of Escrow and Excess Payments. (1) 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 be considered escrow and be distributed as follows:

(a) [1-] The portion of the escrow that represents the federal share of the collection (as determined by the Medicaid match rate) shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) [2-] The portion of the escrow payment which represents the state share (as determined by the Medicaid match rate) of the collection shall be sent to the family.

(c) [(3)] After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 9. Income [7- Wage] Withholding Distribution. (1) A child support or medical support payment made through income [wage] or other withholding shall use the date the income is received [withheld] for the date of collection for distribution to meet the support obligation.

(2) Distribution of income [wage] withholding collections shall be made according to specification in Sections 5, 6, 8, or 10 [3, 4, 6 or 8] of this administrative regulation.

Section 10. [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 location specified by the child support agency in initiating state within two (2) business [fifteen (15) calendar] days of initial receipt by the responding state.

[(1)] 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 public [K-TAP] assistance payment.

(2) [(3)] Collection of child support in the month after the month the family receives its last public [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 11. [9-] Additional Administrative Enforcement Remedies.

(1) If 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 on personal or real property if an arrearage is equal to or greater than one (1) month's obligation;

1. Notify the noncustodial parent, or obligor, that he has twenty (20) days to contest and appeal the lien action pursuant to 904 KAR 2:400, Section 4.

2. The transfer of property by an obligor to avoid payment to the CSP shall be considered an indication of fraud in accordance with 1998 Ky. Acts ch. 255, sec. 23.

(b) Report to certified consumer reporting agencies;

(c) Notify a board of license, board of certification, Department of

Transportation or Department of State Police for the denial, revocation, or suspension of driver's license professional license or certification, occupational license or certification, recreational license, sporting license or license to carry a concealed deadly weapon according to 1998 Ky. Acts ch. 417, sec. 1 and ch. 255, sec. 5; [credit bureaus;

(e) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license; and]

(d) Certify a case for passport denial or revocation;

(e) Pursuant to 1998 Ky. Acts ch. 255, sec. 22, issue an order, or seek a judicial order, if appropriate, requiring a delinquent noncustodial parent, or obligor, of children receiving public assistance to participate in work activities.

(2) The Cabinet for Families and Children shall:

(a) Provide information to certified 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 certified consumer reporting agencies if 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 subsequent location efforts are successful.

(3) Denial or suspension of [driver's] license or certification. The cabinet shall deny or suspend driver's license, professional license or certification, occupational license or certification, recreational license, sporting license or license to carry a concealed deadly weapon when the noncustodial parent, or obligor, owes an arrearage equal to or exceeding one (1) year.

(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 January 1, 1994; and

2. Identify a person who has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding; and

3. Contact the contracting official to determine if the contracting official intends to pursue judicial action.

4. [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 notice [referral] to revoke or deny a certification or [driver's] license.

5. [4-] Send by first class mail to a noncustodial parent, or obligor, who holds the certification or [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 or certification; and

b. A noncustodial parent, or obligor, answer to notice of intent.

6. [5-] Notify the noncustodial parent, or obligor, that the only basis for contesting the notice [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;

7. A delinquent noncustodial parent, or obligor shall take one (1) of the following actions to retain his property, license or certification:

a. Post [e-] a bond [is posted] for the total arrearage which has accrued since January 1, 1994;

b. Enter into a payment agreement [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

c. [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 cabi-

net 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) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision that the case qualifies for license or certification suspension or revocation, the cabinet [child support agency] shall notify the issuing board, Transportation Cabinet or Department of State Police of the request for the denial or suspension of the [driver's] license or certification, 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 (b) [(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) If the case does not qualify for license or certification suspension or revocation, [submittal to the Transportation Cabinet], a notice to deny or suspend the [driver's] license or certification shall not be sent.

(f) 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 board, Department of State Police or Transportation Cabinet, the Cabinet for Families and Children shall refer the name of the noncustodial parent, or obligor, to the board, Department of State Police or Transportation Cabinet for the denial or suspension of a [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 (b) [(a)5d] of this subsection.

(g) The Cabinet for Families and Children shall notify the Transportation Cabinet, Department of State Police or board of certification to reinstate or reissue a previously suspended or revoked [driver's] license or certification if:

1. The noncustodial parent, or obligor complies with a subpoena or warrant; or

2. The noncustodial parent, or obligor, makes full payment of the arrearage; or

3. [2:] The noncustodial parent, or obligor, posts a bond for the total arrearage amount; or

4. [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 (b) [(a)5d] 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:

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 12. [40:] 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 13. [41:] 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", (10/98 [2/97] Edition), Cabinet for Families and Children;

(b) CS-63 "Notice to the Transportation Cabinet", (10/98 [2/97] Edition), Cabinet for Families and Children;

(c) CS-78 "Payment Agreement", (10/98 [2/97] Edition), Cabinet for Families and Children;

(d) CS-84, "Administrative Subpoena", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;

(e) CS-85, "Notice of Lien", (Edition 10/98), Cabinet for Families and Children, is a new form added due to federal regulations;

(f) CS-92, "Intrastate Notice of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;

(g) CS-111, "Child Support Received Affidavit", (10/98 [2/97] Edition), Cabinet for Families and Children;

(h) CS-119, "Obligor's Notice of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations.

(i) CS-120, "Release of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations.

(j) [(e)] CS-122, "Advance Notice of Intent to Collect Past-due Support", (10/98 [10/97] Edition), Cabinet for Families and Children;

(k) [(f)] CS-123, "State Tax Preoffset Letter", (7/96 Edition), Cabinet for Families and Children;

(l) [(g)] CS-148, "Custodial Parent Affidavit Letter", (10/98 [2/97] Edition), Cabinet for Families and Children;

(m) [(h)] CS-149, "Custodial Parent Affidavit of Support Paid", (10/98 [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.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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. 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 Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502)

564-7900, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The type entities affected by this regulation are obligors whose pensions and retirement will be withheld, employers in Kentucky, and boards of licensure or certification. Numbers of these entities are not known.

(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 comment 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 comment 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 will result in no additional reporting or paperwork for child support program clients or obligors.

2. Second and subsequent years: Same as #1.

(3) Effects on the promulgating administrative body:

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

1. First year: Expected revenues are \$1,787,000 (New Hire Directory), \$450,000 (Income Withholding of Pensions), and \$750,000 (Licenses), with a total of \$2,987,000. Expected expenditures are \$1,575,000 (New Hire Directory), \$2,500,000 (State Case Registry), and \$7,500,000 (System Development), with a total of \$11,575,000. The match rate at 34%/66% results in a actual state cost of \$948,500 for FY 99.

2. Continuing costs or savings: : Expected revenues are \$1,840,600 (New Hire Directory), \$472,500 (Income Withholding of Pensions), and \$787,500 (Licenses), with a total of \$3,100,600. Expected expenditures are \$1,575,000 (New Hire Directory), \$2,837,000 (State Case Registry), \$3,277,000 (State Disbursement Unit) and \$7,500,000 (System Development), with a total of \$11,575,000. The match rate at 34%/66% results in a actual state cost of \$2,063,700 for FY 2000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Expectations are that child support collections will increase as a result of this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The cost is partially covered by increased revenue collections with the remaining expenditure costs covered by the enacted increase in the agency 1999-2000 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: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods suggested. All requirements are federally mandated.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the enforcement requirements prescribed in 42 USC 651 et seq.

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

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as federally required.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 651 et seq.

2. State compliance standards. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. None

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

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

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amendment)

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

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [KRS 205.520]

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.558, 1998 GA HB 132 [42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer Medicaid the program. 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 provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Department" means the Department for Medicaid Services or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with care provided in beds also participating in the Medicare program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396t shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one (1) which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396t shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds

also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner,] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when enrollment is completed [participation status is achieved].

(2) All nursing facilities [Each nursing facility] shall have [be required to have participatory status in the program of health care known as Medicare in] at least twenty (20) percent of all [the facility's] Medicaid certified [participating] beds, [(]but not less than ten (10) beds, also certified to participate in Medicare unless they have obtained a Medicaid waiver of the nurse staffing requirement. [;] If the nursing facility has less than ten (10) [Medicaid-participating] beds certified for Medicaid, all Medicaid certified [participating] beds shall also be certified to participate in [the] Medicare [Program] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility which has obtained a Medicaid waiver of the nurse staffing requirements [with waiver] chooses to participate in [the] Medicare, they [Program, the facility] shall have [meet Medicare participation requirements in] at least twenty (20) percent of all [the facility's] Medicaid certified [participating] beds, [(]but not less than ten (10) beds, also certified to participate in Medicare; if [the facility has] less than ten (10) [Medicaid-participating] beds are certified for Medicaid, all Medicaid [participating] beds shall also be certified to participate in [the] Medicare, [Program-])

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and [annual] resident review requirements specified in 42 USC 1396r and 907 KAR 1:755 [; effective with regard to admissions and resident stays occurring on or after January 1, 1989]. Facilities failing to comply with these requirements [this requirement] shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or IGFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services [as approved by the state]. A facility shall be considered accredited if [Appropriate accreditation shall have occurred when] the facility has been accredited by:

(a) [a nationally recognized accrediting agency or organization such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria

ria if the services are provided in beds also participating in the Medicare Program; [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria if [when] the services are provided in any Medicaid participating beds; [.]

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified in accordance with standards and conditions specified in the [907 KAR 1:545, Incorporation by reference of the] nursing facility services manual to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the nursing facility services manual to operate a unit providing care for persons who are ventilator dependent.

Section 4. Determining Patient Status. The department [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [A patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and [annual] resident review criteria specified in 42 USC 1396r and 907 KAR 1:755 [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) Individuals [Patients] qualify for high intensity nursing care if:

(a) On a daily basis:

1. [when] Their needs mandate high intensity nursing care; or

2. High intensity rehabilitation services; and

3. [on a daily basis and when, as a practical matter,] The care can only be provided on an inpatient basis;

(b) [Where] The inherent complexity of a service prescribed for an individual [a patient] exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or

(c) They have [the patient would qualify for high intensity nursing care. A patient with] an unstable medical condition manifesting a combination of care needs in the following areas [shall qualify for high intensity nursing care]:

1. [(a)] Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. [(b)] Nasogastric or gastrostomy tube feedings;

3. [(c)] Nasopharyngeal and tracheotomy aspiration;

4. [(d)] Recent or complicated ostomy requiring extensive care and self-help training;

5. [(e)] In-dwelling catheter for therapeutic management of a urinary tract condition;

6. [(f)] Bladder irrigations in relation to previously indicated stipulation;

7. [(g)] Special vital signs evaluation necessary in the management of related conditions;

8. [(h)] Sterile dressings;

9. [(i)] Changes in bed position to maintain proper body alignment;

10. [(j)] Treatment of extensive decubitus ulcers or other widespread skin disorders;

11. [(k)] Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

12. [(l)] Initial phases of a regimen involving administration of medical gases; or

13. [(m)] Receiving services which would qualify as high intensity rehabilitation services if [when] provided by or under the supervision of a qualified therapist[es], for example:

a. Ongoing assessment of rehabilitation needs and potential;

b. Therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist;

c. Gait evaluation and training;

d. Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility;

e. Maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance;

f. Ultrasound, short wave, and microwave therapy treatments;

g. Hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and

h. Services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if [when] the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if [when] the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;

2. Physical or environmental management for confusion and mild agitation;

3. Must be fed;

4. Assistance with going to bathroom or using bedpan for elimination;

5. Old colostomy care;

6. In-dwelling catheter for dry care;

7. Changes in bed position;

8. Administration of stabilized dosages of medication;

9. Restorative and supportive nursing care to maintain the individual [patient] and prevent deterioration of his condition;

10. Administration of injections during time licensed personnel is available;

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if [when] care needs are limited to the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch[es] or cane;

3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;

4. Medications that can be self-administered or the individual requires minimal supervision.

(4) An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person] with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be

specifically excluded from coverage in the following situations:

(a) ~~If [When]~~ the ~~department~~ [cabinet] determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual ~~[patient]~~, other patients in the facility, or staff of the facility; and

(b) ~~If [When]~~ the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) ~~If [When]~~ the individual ~~[patient]~~ does not meet the preadmission screening and ~~[annual]~~ resident review criteria specified in 42 USC 1396r and 907 KAR 1:755 for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for individuals with mental retardation ~~[the mentally-retarded]~~ and individuals ~~[persons]~~ with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities; or
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. ~~[when]~~ The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~An [It shall be the policy of the cabinet that no]~~ individual shall ~~not~~ be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation.

(2) Patient status shall be reevaluated at least once every six (6) months.

(3)(a) If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity care, low intensity care, or intermediate care for the persons with mental retardation; then

(b) ~~[mentally-retarded services and payment is no longer appropriate in the facility;]~~ Payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care; and

(c) Ten (10) days from the date of the reevaluation payment shall ~~no longer be appropriate in the facility.~~

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. Individuals ~~[Patients]~~ who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if ~~[when]~~ the care is preauthorized by ~~[staff of]~~ the department ~~[for~~

~~Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain ~~[head]~~ injury into the certified brain ~~[head]~~ injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which ~~shall~~ ~~[are]~~ not be considered brain injuries requiring specialized rehabilitation under this section:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) ~~An individual~~ ~~[A patient]~~ may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual ~~[patient]~~ shall not have previously received specialized rehabilitation services (individuals ~~[persons]~~ discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The individual ~~[patient]~~ shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Requirements, Standards and Preauthorization of Certified Distinct Part Nursing Facility Ventilator Services. Individuals who are ventilator dependent and meet usual high intensity nursing facility patient status criteria may be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distict-part ventilator nursing facility unit.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back-up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following describe patient criteria and treatment characteristics for distict-part ventilator nursing facilities:

(a) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual requires such mechanical support for twelve (12) or more hours per day and requires twenty-four (24) hours per day high intensity specialty nursing care; or

(b) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

1. The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is consistent with the maximal function of the individual and ultimately no mechanical respiratory support;

2. The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism) as documented in the individual's physician and nursing progress notes; and

3. The individual requires twenty-four (24) hours per day high intensity specialty nursing care.

(c) An individual shall not be considered ventilator dependent due to being in an active weaning program if:

1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism); or

2. The individual has been off the ventilator (or respiration stimulating mechanism) for seventy-two (72) consecutive hours.

(d) Admissions from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer; and

(e) A physician's order specifies that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.

(3) Patient status determinations shall be made taking into consideration the following factors and those defined in the Nursing Facility Services Manual, Section IV-B, C and D:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, and obstructive airway disorders needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

(g) Suitability of transfer to the ventilator care unit;

(h) Provision of an appropriate place of care; and

(i) Other facility admission indicators as shown in the Nursing Facility Services Manual.

Section 8. Denial of Patient Status. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 9. Reserved Bed Days. The department [cabinet] shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and individuals [persons] with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during an individual's [a-recipient's] absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual [person] shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Individuals [Persons] for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual may [person-can] be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For leaves of absence other than for hospitalization, the individual's [patient's] physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 10. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) Compliance with 907 KAR 1:755E is required in order for an individual to be admitted to an NF.

Section 11. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, February 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.

[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]

DENNIS BOYD, Commissioner
JOHN H. MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: July 29, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Two nursing facilities certified for ventilator dependent recipients. The two facilities have a

total of 97 Medicaid certified beds.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. However, no effect should be experienced.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. However, no effect should be experienced.

(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: See regulation 907 KAR 1:025E.

1. First year: See regulation 907 KAR 1:025E.

2. Continuing costs or savings: See regulation 907 KAR 1:025E.

3. Additional factors increasing or decreasing costs: See regulation 907 KAR 1:025E.

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No public comments were received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients. Also allows recipients to continue to receive Medicaid reimbursement payments for nursing facility services during the hearing process.

(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, and welfare of Medicaid recipients by not allowing a continuation of Medicaid benefits pending an agency hearing decision.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation

does not set compliance standards.

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 42 USC 1396a-d, 1998 GA HB 132 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 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 provisions relating to dental services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and the medically needy.

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

(2) "Participating" is defined in 907 KAR 1:002.

(3) "Providers" is defined in 907 KAR 1:002.

Section 2. Out-of-hospital Services. Payment for out-of-hospital services shall be limited to those procedures listed in the Dental Manual in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Orthodontics;
- (6) Prosthetics;
- (7) Operative;
- (8) Other services.

Section 3. Inpatient Hospital Services. (1) Payment shall be made for hospital inpatient covered services rendered by an oral surgeon

subject to the general physician limitations established in 907 KAR 3:005[~~Physicians' services~~].

(2) Payment shall be provided for covered services rendered by a general dentist for hospital inpatient care for a patient termed to be "medically [a] high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., a person with mental or emotional disorder; or
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 4. Incorporation by Reference. (1) "Dental Manual", August 1998 [~~December 1996~~] Edition, Department for Medicaid Services, is incorporated by reference.

(2) This material [H] 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.

DENNIS BOYD, Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid dental providers and recipients.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. None received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. None received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$4.8 million (cost)

2. Continuing costs or savings: \$4.8 million (cost)

3. Additional factors increasing or decreasing costs: This regulation is being promulgated as a companion to 907 KAR 1:026.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.49% equaling \$3,377,760 and state matching funds of 29.51% equaling \$1,422,240. State revenues will come from allocated funds already in the Department for Medicaid Services 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: None received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will increase reimbursement rates which will increase access for Medicaid recipients, add dental sealants to the scope of coverage which will dramatically decrease the incidence of dental caries in Medicaid eligible children and to clarify Dental Program policy.

(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. Access to dental services would diminish for Medicaid recipients, failure to include dental sealants will result in continued rampant dental caries in Medicaid eligible children.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This regulation is being promulgated as a companion to 907 KAR 1:026.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

907 KAR 1:560. Medicaid hearings and appeals regarding eligibility [for recipients].

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 42 CFR 431 subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.025, 194.050, 1998 GA HB 132 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places Department for Medicaid Services and the Medicaid Program under the Cabinet for Health

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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 provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues. ~~[for recipients.]~~

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) ~~["Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.~~

(6) ~~"Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral health care organization.~~

(7) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) An applicant or recipient shall be informed of his right to a hearing:

(a) Verbally and in writing when application is made; and

(b) In writing if an action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) An applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) Himself.

Section 3. Request for a Hearing. (1) An applicant, recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office.

(2) The applicant, recipient or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Verbally and followed up in writing.

(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or verbal (with appropriate follow-up in writing) request from an applicant, recipient or authorized representative with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid eligibility ~~[or coverage]~~ shall be received by the designated hearing agency within:

(a) ~~[Forty (40) days of the date of the advance notice of adverse action;~~

~~(b)] Thirty (30) days of the notice of:~~

1. Denial of an application;

2. Discontinuance of an active case;

3. Increase in patient liability; or

~~[4. Reduction of Medicaid coverage; or]~~

~~(b) [(e)] A time period equal to the delay in action by the agency.~~

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the request for a hearing on the notice of:

1. Adverse action;

2. ~~[or the notice of]~~ Discontinuance of Medicaid eligibility; or

3. Increase in patient liability; ~~[or reduction of Medicaid coverage.]~~

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of:

1. Adverse action;

2. ~~[or the notice of]~~ Discontinuance of the Medicaid eligibility;

3. Increase in patient liability; ~~[or reduction of Medicaid coverage;]~~

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid eligibility [coverage] shall be continued at the level prior to the adverse action through the month in which the hearing officer's decision is:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance; or

2. Proposed increase in patient liability; ~~[or~~

~~3. Proposed reduction of Medicaid coverage;]~~ and

(b) Received within ten (10) days of the date of the:

1. Advance notice of adverse action; or

2. Notice of ~~[decrease or]~~ discontinuance from the Department for Medicaid Services or its designee.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

1. Adverse action;

2. ~~[or notice of]~~ Discontinuance of Medicaid eligibility; or

3. Increase in patient liability ~~[or reduction of Medicaid coverage];~~ and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance or ~~[;]~~ increase in patient liability ~~[or reduction of Medicaid coverage]~~ to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding:

1. The hearing process;

2. ~~[including]~~ The right to case record review prior to the hearing;

3. The right to representation; and

4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that a hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, recipient or authorized representative:

(a) May withdraw his request for a hearing prior to release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request.

(a) A hearing request shall be considered abandoned if the applicant, recipient or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of his claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by other than a person involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary; and

(b) If a medical assessment at the department's expense is requested by the applicant, recipient or authorized representative and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

(a) Before the hearing; and

(b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore eligibility [services or coverage] is appropriate if:

(a) A hearing has been requested;

(b) A hearing decision has not been rendered; and

(c) The department's action or proposed action made the applicant or recipient ineligible for benefits [a service or coverage] to which he was entitled.

(2) After corrective action has been taken:

(a) The applicant, recipient or authorized representative shall be given the opportunity to withdraw the hearing request; and

(b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state where the applicant, recipient or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(5) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110.

(2) A decision with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

1. Attributed to the community spouse; and

2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient. (1) An applicant, recipient or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board.

(2) The appeal request shall be considered timely if it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

(a) Filed:

1. In writing; or

2. Verbally, if a written request is subsequently sent; and

(b) Considered filed on the day the request is received.

(5) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.

(6) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant, recipient or authorized representative specifically requests permission to file additional proof.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the appeal board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall be irrevocable in respect to the issue in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) A Medicaid case action following a decision of a hearing officer or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving [a reduction of Medicaid coverage or] an increase in patient liability, action shall be taken to reduce the patient liability [restore benefits] within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. [Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determination. The department shall contract with a peer review organization to provide a level of care determination for an individual in a nursing facility. For an individual appealing a peer review organiza-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

tion's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency:

(a) The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision;

(b) If the request for reconsideration is made within ten (10) days, benefits shall continue as appropriate until the reconsideration decision has been made;

(c) A reconsideration hearing shall be held within:

1. Ten (10) working days of the request if the recipient is in the facility; and

2. Thirty (30) days of the request if the request for reconsideration is received after the recipient has left the facility;

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090;

(4) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040;

(5) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110. A copy of the decision shall be mailed to the recipient and his representative;

(6) If the reconsideration decision is adverse to the recipient, he may appeal to the department for a hearing in accordance with this administrative regulation;

(a) The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision. A request may be filed with the utilization review agency or directly with the department;

(b) If filed with the utilization review agency, the agency shall forward the request with appropriate medical records and other necessary documentation to the department;

(7) If a negative decision has been appealed to the department, the appeal shall be processed as established in Sections 3, 4, 5, and 6 of this administrative regulation;

Section 19. [20:] Special Procedures Relating to a Managed Care Participant. Special procedures relating to a managed care participant are located in 907 KAR 1:563. [(1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing;

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral health care organization in which a member is enrolled in accordance with 907 KAR 1:710;

(2) If the of the partnership or the managed behavioral health care organization decision is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral health care organization or its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral health care organization plan;

(3) A member or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board;

(4) An appeal shall be processed as established in Sections 14, 15 and 16 of this administrative regulation;]

Section 19. [20:] Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

[Section 21. A hearing or an appeal relating to a decision to reclassify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.]

Section 20. [22:] Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7). [In accordance with KRS 13B.090(7), in a proceeding conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be borne by the applicant or recipient.]

Section 21. [23:] Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.

(2) This material [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.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: July 29, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: potentially it may affect any of the approximately 21,646 current nursing facility residents who are Medicaid recipients.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients if there is conflicting policy between this administrative regulation and 907 KAR 1:563E.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 205.520, 1998 GA HB 132 [42-CFR 441.30, 447 Subpart B, 42-USC 1396a-d]

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]. 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 method for determining the amount [amounts] payable by the cabinet for each dental service [services].

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

(1) "Usual and customary charge" means [refers to] the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(2) "Medically high risk" means [patient is defined as] a patient in one (1) of the following classifications:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient i.e., a person with mental or emotional disorder [(retardate, emotionally disturbed)]; or

(e) Other e.g. [(car accident, high temperature, massive infection, etc.)];

Section 2. Reimbursement. (1) Except as specified in Section 4 of this administration regulation, the cabinet shall reimburse a participating dentist [dentists] for a covered service provided [services rendered] to an eligible Medicaid recipient [medical assistance recipients] at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges.

(2) If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

(3) Fixed upper limits not determined in accordance with the principle established [shown] in subsections (1) and (2) of this section [this subsection of the administrative regulation (if any)] due to consideration of other factors, [(such as recipient access,)] shall be specified in Section 4 of this [the] administrative regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care [which] shall be paid in the same manner as established [shown] in Section 2 of this administrative regulation, for a service provided to an inpatient.

(a) [~~refers to those services provided inpatients.~~] It shall not include:

1. A dental service [services] provided in the outpatient extended care; or

2. A home health unit [units] of a hospital [hospitals].

(b) Any dentist submitting a claim for a hospital inpatient care benefit [benefits] must agree to accept payment in full for a service [services] rendered that patient during that admission.

(2) A general dentist may submit a claim for a hospital inpatient service [services] for the patient termed "medically [a] high risk."

Section 4. Reimbursement Exceptions. The following reimbursement procedure exception [procedures] shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

upper limit [as shown with preauthorization required for all procedures except for orthodontic consultation]:

(1) All comprehensive orthodontic procedures shall require prior authorization. As referenced in Section 2 of this administrative regulation the following comprehensive orthodontic services shall pay at a fixed fee:

(a) Orthodontic consultation, eighty-four (84) dollars and seventy (70) cents [seventy-seven (77) dollars], except that the fixed fee shall be forty-two (42) dollars and thirty-five (35) cents [thirty-eight (38) dollars and fifty (50) cents] if:

1. The provider is referring the recipient to a specialist;

2. [or] The prior authorization for orthodontic [preauthorization for orthodontia] services is not approved; or

3. A request for prior authorization of orthodontic [preauthorization of orthodontia] services is not made;

(b) [(2) Preauthorized] Early phase [orthodontic services] for moderately severe or severe disabling [handicapping] malocclusion, \$1,030 for an orthodontist [orthodontists] and \$930 for a general dentist [dentists];

(c) [(3) Preauthorized orthodontic] Services for moderately severe disabling [handicapping] malocclusions, \$1,375 for an orthodontist [orthodontists] and \$1,250 for a general dentist [dentists]; and

(d) [(4) Preauthorized orthodontic] Services for severe disabling [handicapping] malocclusions, \$2,075 for an orthodontist [orthodontists] and \$1,850 for a general dentist [dentists].

(2) The upper limit for the following procedures shall be the fixed upper limit derived utilizing the methodology described in Section 2 of this administrative regulation increased by the following fixed percentages:

Procedures	Percentage Of Increase
Initial Oral Exam	25%
Prophylaxis	20%
Amalgam	10%
Resin	7%
Prefabricated Stainless Steel Crown	5%
Prefabricated Resin Crown	5%
Pin Retention	10%
Pulp Cap (Direct)	10%
Pulpotomy (Therapeutic)	10%
Root Canal	10%
Simple Extraction	5%

Section 5. An oral surgeon [Oral surgeons] shall be treated in the same manner as a physician [physicians] for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 3:010 [1:010, Payments for physicians' services].

Section 6. Third-party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is in accordance with [shown in] 907 KAR 1:005 [Nonduplication of payments].

[Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed admin-

istrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid dental providers and recipients.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. None received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. None received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$4.8 million (cost)

2. Continuing costs or savings: \$4.8 million (cost)

3. Additional factors increasing or decreasing costs: This regulation is being promulgated as a companion to 907 KAR1:026.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.49% equaling \$3,377,760 and state matching funds of 29.51% equaling \$1,422,240. State revenues will come from allocated funds already in the Department for Medicaid Services 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: None received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will increase reimbursement rates which will increase access to dental services for Medicaid recipients, add dental sealants to the scope of coverage which will dramatically decrease the incidence of dental caries in Medicaid eligible children and to clarify Dental Program policy.

(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. Access to dental services would diminish for Medicaid recipients, failure to include dental sealants will result in continued rampant dental caries in Medicaid eligible children.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This regulation is being promulgated as a companion to 907 KAR 1:626E.

(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 impli-

cated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amendment)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, 1998 GA HB 132

[EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program. House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective, July 2, 1996] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Evaluation. (1) Every child shall have an evaluation or assessment as a part of his permanent record;

(a) A primary evaluation shall occur within forty-five (45) days after receipt of the referral; or

(b) If primary evaluation does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(2) The primary level evaluation is the first level in the First Steps evaluation system [in a multi-level system] that shall be utilized to determine eligibility, developmental status and program planning:

(a) The primary level is used when there are no existing evaluations available within the allowed time limits;

(b) Primary level evaluations shall provide evaluation in all five (5) developmental areas;

(c) The primary evaluation shall be provided by a [an approved] team consisting of a physician or nurse practitioner and a primary [developmental] evaluator approved by the cabinet;

(d) Primary evaluation shall be multidisciplinary and shall minimally include:

1. A medical component completed by a physician or a nurse practitioner that includes:

a. A history and physical examination; [and]

b. A hearing and vision screening; and

c. A child's medical evaluation that shall be current according to the following:

(i) For children under twelve (12) months of age, the medical

evaluation shall have been performed within three (3) months prior to referral to First Steps; and

(ii) For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral;

2. A developmental component completed by a qualified primary [developmental] evaluator that utilizes standardized measures and the results interpreted to the family and reported at the initial IFSP team meeting.

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;

(4) Reevaluations shall be provided when a child's eligibility warrants review or a new condition is suspected or becomes apparent;

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team.

(5) An intensive evaluation is the second level in the First Steps evaluation system [in a multi-level system] that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation:

(a) A child shall be referred for an intensive level evaluation when:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to [or] further define the child's developmental status in terms of a child's strengths and areas of need; or

2. A child doesn't meet eligibility guidelines at the primary level, but a primary evaluator or the family still have concerns that the child is developing atypically and a determination of professional judgement is needed; or

3. The IFSP team requests an intensive team evaluation for the purposes of a diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b) A record review shall be done by an intensive team at the request of the IFSP team whenever:

1. There is a question of eligibility;

2. Concern for a child's condition; or

3. Effectiveness of a child's program plan. [When a concern of the child's condition warrants the review of records of the primary evaluation.]

(c) [(b)] An intensive level evaluation shall be provided by an approved team consisting of:

1. A board certified developmental pediatrician; or

2. A pediatrician who has experience in the area of early childhood development; and

3. One (1) or more qualified developmental professionals.

(6) [A tertiary level evaluation is the third level in a multilevel system that shall be utilized to determine eligibility:

(a) A child shall be referred for a tertiary level evaluation when:

1. Diagnostic information is needed in specific areas;

2. The intensive team's review of records and the results of the primary evaluation indicate that the complexity of the problems warrant a more comprehensive neurodevelopmental evaluation that is not available at the intensive level;

(b) The tertiary team level evaluation is a comprehensive neurodevelopmental evaluation for the purpose of:

1. Establishing a definitive diagnosis;

2. Providing evaluation of the infant or young child with complex neurological and developmental problems; and

3. Making specific recommendations regarding treatment and service planning;

(c) The tertiary team evaluation shall be provided by an approved team at a tertiary medical center. The team shall include:

1. A board certified developmental pediatrician; and

2. A psychologist, with experience in early childhood development;

3. Others as identified.

(7) Family rights must be respected and procedural safeguards followed in providing evaluation services:

(a) Written parental consent shall be obtained before conducting an evaluation or assessment.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong.

2. With the presence of a professional judgement of developmental delay that determines the child to be eligible, First Steps shall provide, at the parent's request, services that do not require by statute proper physical or medical evaluations.

(c) When a family referred for evaluation is under a court order or a social services directive to enroll their child in First Steps, and the parent refuses the evaluation, the court or social service agency shall be informed.

(7) [(8)] A written report shall be completed for every level of evaluation including record reviews.

(a) The minimum components are (evaluation report shall include):

1. Names of evaluators and discipline;
2. Name and telephone number of contact person;
3. Identifying information that includes:
 - a. Age;
 - b. Date of birth;
 - c. Date of evaluation;
 - d. Evaluator's affiliation, and professional degree;
 - e. Referral source; and
 - f. Reason for referral or presenting problems.
4. Tests administered or evaluation procedures utilized and purpose of instrument. No one (1) method of evaluation shall be used, but a combination of tests and methods shall be used;
5. Test results and interpretation of strength and needs of child;
6. Test results reported in standard deviation or developmental quotient when such instrumentation is required;
7. Eligibility;
8. Diagnosis;
9. Specific recommendations for intervention relating to areas of delayed development;
10. Program plan [8:] recommendations that address the child's holistic needs based on the evaluation;
11. [9:] A narrative description of all five (5) areas of a child's developmental status;

(b) The full report [10: Test results that include recommendations and a narrative description] shall be written in clear, concise language that is easily understood by the family.

(c) [(b)] The reports and notification of need for further evaluation shall be made available to the IFSP team within ten (10) days [in a timely manner].

(8) [(9)] Child records of timely evaluations transferred from out of state tertiary centers or developmental evaluation centers may be utilized for eligibility determination;

(a) These records shall be reviewed for all required evaluation record components by the POE services coordinator;

(b) If information is unattainable, the child shall be evaluated for eligibility.

Section 2. Eligibility. (1) Children who are eligible for First Steps services include those who are ages birth through two (2), and:

(a) By using appropriate diagnostic instruments and procedures, or professional judgment, are determined to have fallen significantly behind developmental norms in the following skill areas:

1. Cognitive development;
2. Communication through speech and language development;
3. Physical development including vision and hearing;
4. Social and emotional development;
5. Adaptive skills development; and

(b) Are significantly behind in developmental norms as evidenced by the following criteria:

1. Two (2) standard deviations below the mean in one (1) skill area (developmental quotient equivalent seventy (70) percent or below); or

2. At least one and one-half (1 ½) standard deviations below the mean in two (2) skill areas; or

3. Children may be determined to be developmentally delayed by professional, clinical judgement, in the event standard deviation scores are inconclusive and evaluation reveals the child has significant atypical development or quality or pattern of development, or

further diagnostic evaluation is needed to address concerns related to the five (5) areas of development. Professional judgement to determine a child to be developmentally delayed shall be obtained from an approved evaluator; or

(2) Those children who are diagnosed with physical or mental conditions which have a high probability of resulting in developmental delay and the diagnosis has been specified by KRS 200.645(10) as an established risk condition. The developmental delay shall be within one (1) of the following categories:

(a) Chromosome abnormalities associated with developmental delay;

(b) Recognizable syndromes associated with developmental delay;

(c) Abnormality in central nervous system;

(d) Neurological or neuromuscular disorders associated with developmental delay;

(e) Symptomatic intrauterine infection or neonatal central nervous system infection;

(f) Sensory impairments that result in significant visual or hearing loss, or a combination of both, interfering with the ability to respond effectively to environmental stimuli;

(g) Metabolic disease having a high likelihood of being associated with developmental delay, even with treatment;

(h) Maternal teratogen exposure at a level known to have a high risk for developmental delay;

(i) Behavioral or emotional disorders associated with extreme excesses or deficits which inhibit function;

(j) Central nervous system malignancy or trauma resulting in developmental delay.

(3) Eligibility for a premature child shall consider:

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth;

(b) Correction for prematurity is not appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician, or nurse practitioner, report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, 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: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and non-profit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need for future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers

with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for coverage and payments.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amendment)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, 1998 GA HB 132

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky's Early Intervention Program. House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Assessment. (1) Assessment shall be the on-going procedure used by qualified personnel throughout the period of a child's eligibility to identify:

- (a) The child's unique strengths and needs;
 - (b) The services appropriate to meet those needs;
 - (c) The family's resources, priorities and concerns which shall be:
 1. Voluntary on the part of the family;
 2. Family-directed; and
 3. Based on information provided by the family through personal interview; and
 - (d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child;
- (2) Every child determined eligible by established risk shall have an assessment in all five (5) areas of development:
- (a) Within the first forty-five (45) days; or
 - (b) If assessment does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented;
 - (3) Information gathered in the assessment shall be used to develop the individualized family service plan (IFSP);
 - (4) Every child enrolled in First Steps shall receive assessment as an integral part of service delivery throughout the period of the child's enrollment in the program;
 - (5) Prior to the annual and six (6) month review of the IFSP a written summary shall be [a formal assessment shall be performed and prior to the meeting a report] provided to the primary service coordinator and family. [For the six (6) month review of the IFSP, a summary of progress and on-going assessment information shall be provided to the primary service coordinator and the family before the meeting.]

Section 2. Individualized Family Service Plan. (1) The IFSP is a contract with the family and providers to insure the services are provided.

- (2) The completed initial IFSP shall have:
 - (a) All appropriate evaluation and assessments;
 - (b) All covered services identified; and
 - (c) Signed approval of the initial service coordinator.
- (3) The First Steps IFSP form shall be used to record the IFSP. All items on the IFSP form shall be completed as instructed on the form.
- (4) Each authorized IFSP is valid for a period not to exceed six (6) months in length. Revisions that occur to the IFSP shall be valid for the remaining period of the plan.
- (5) [(2)] The following principles shall be adhered to in the development and implementation of the IFSP:
 - (a) Infants and toddlers are uniquely dependent on their families for their survival and nurturance. This dependence necessitates a family-centered approach to early intervention;
 - (b) Early intervention systems and strategies shall honor the ra-

cial, ethnic, cultural, and socioeconomic diversity of families;

(c) The diversity of family patterns and structures. Each family has its own structure, roles, values, beliefs, and coping styles. Respect for and acceptance of this diversity is a cornerstone of family-centered early intervention;

(d) In the context of the IFSP process, in respect to the autonomy, independence, and decision making. [~~Respect for family autonomy, independence, and decision-making means that~~] families must be able to choose the level and nature of early intervention's involvement in their lives;

(e) Family and professional collaboration and partnerships are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) No one (1) agency or discipline can meet the diverse and complex needs of infants and toddlers with special needs and their families. Therefore, a team approach to planning and implementing the IFSP is necessary;

(g) An enabling approach to working with families requires that professionals reexamine their traditional roles and practices and develop new practices when necessary that promote mutual respect and partnerships;

(h) First Steps services shall be flexible, accessible and responsive to family-identified needs;

(i) First Steps services shall be provided according to the normalization principle that families should have access to services provided in as normal a fashion and environment as possible and that promote the integration of the child and family within the community;

(6) [(3)] For a child that has been evaluated for the first time and determined eligible, a meeting to develop the initial IFSP shall:

(a) Be conducted within forty-five (45) days after the receipt of the referral; or

(b) If the IFSP does not occur within forty-five (45) days due to illness of the child or approval to delay [a request] by the parent, the delay circumstances shall be documented;

(7) [(4)] A review of the IFSP for a child and the child's family shall be conducted at least every six (6) months. A review shall be conducted more frequently if:

- (a) The family requests such a review; or
- (b) The child's conditions change; or
- (c) The service providers change;

(8) [(5)] A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;

(9) [(6)] With the approval of the family, the primary service coordinator shall arrange a conference to discuss the possible transition of the child. The conference shall be conducted at least ninety (90) days before the child's third birthday and shall include:

- (a) The family;
- (b) A representative of the local education agency and representatives of other potential settings;
- (c) The primary service coordinator as a representative of the First Steps Program;
- (d) Others identified by the family;

(10) [(7)] The IFSP shall include:

(a) Summary of family rights handbook and signed assurances by the family.

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes:
 - a. Vision;
 - b. Hearing;
 - c. Fine and gross motor skills; and
 - d. Health status and immunization of the child;
2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
3. Communication development that includes skills related to exchanging information or feelings', including receptive and expressive communication and communication with peers and adults;
4. Social or emotional development that include skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. This includes:
 - a. Interactions with peers and adults;
 - b. Play skills;

- c. Self-concept development; and
- d. Bonding with family members;
- 5. Adaptive development that includes self-help skills necessary for independent functions, that include:
 - a. Self-feeding;
 - b. Toileting; and
 - c. Dressing and grooming;
- (c) [(b)] Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
- (d) [(e)] A description of:
 - 1. Underlying factors that may affect the child's development;
 - 2. What motivates the child, as determined on the basis of observation, child interaction and parent report;
- (e) [(d)] With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;
- (f) [(e)] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:
 - 1. Be functionally stated;
 - 2. Be representative of the family's own priorities;
 - 3. Fit naturally into the family's routines or schedules;
 - 4. Reflect the use of the family's own resources and social support network;
- (g) [(f)] The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Services shall:
 - 1. Be stated in frequency, intensity, duration, location and method of delivering services; and in the payment arrangements, if any;
 - 2. Unless prior authorization is granted, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall:
 - a. Not exceed one (1) hour [~~three (3) hours~~] per discipline per week for the following disciplines:
 - (i) Audiologist;
 - (ii) Family therapist, nurse or LPN, or health aide;
 - (iii) Nurse;
 - (iv) LPN;
 - (v) Health aide;
 - (vi) Nutritionist or dietician;
 - (vii) Dietician;
 - (iv) [(viii)] Occupational therapist or occupational therapist assistant;
 - [(ix)] Occupational therapist assistant;
 - (v) [(x)] Orientation and mobility specialist;
 - (vi) [(xi)] Physician;
 - (vii) [(xii)] Physical therapist or physical therapist assistant;
 - [(xiii)] Physical therapist assistant;
 - (viii) [(xiv)] Psychologist;
 - (ix) [(xv)] Speech language pathologist or speech language pathologist assistant;
 - [(xvi)] Speech language pathologist assistant;
 - (x) [(xvii)] Licensed social worker;
 - (xi) [(xviii)] Teacher of the visually impaired;
 - (xii) [(xiv)] Teacher of the deaf and hard of hearing;
 - (xiii) Developmental interventionist or developmental associate.
 - b. Not exceed five (5) hours per discipline per week for the following:
 - (i) Developmental interventionist; or
 - (ii) Developmental associate; or
 - (iii) Developmental assistant;
 - b. To request prior authorization for exceeding limits the following process shall be utilized:
 - (i) Send written request, with copy of IFSP and documentation of need, to the First Steps state coordinator.
 - (ii) Be reviewed by the state coordinator and forwarded to the state best practice review panel.
 - (iii) Complete process within ten (10) working days of receiving request.
 - (iv) The decision of the state panel may be appealed to the state First Steps coordinator.

(v) The decision of the First Steps coordinator may be appealed pursuant to 908 KAR 2:170.

3. To the maximum extent appropriate early intervention services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;

(g) The projected dates for initiation of the services, and the anticipated duration of those services;

(h) Other services that the child needs, such as medical services or housing for the family, but that are not required under early intervention. The funding sources to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(i) The name of the primary service coordinator chosen to represent the child's or family's needs. The Primary Service Coordinator will be responsible for the implementation of the IFSP and coordination with other agencies and persons;

(j) The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;

1. With approval of the family, a transition conference shall occur at least ninety (90) days prior to the child's third birthday;

2. The transition conference shall involve staff from the First Steps Program, the primary service coordinator, the family, staff from the local public educational agency, and other agencies per family request that could be potential service agencies after the age of three (3);

3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. This meeting shall be chaired by the primary service coordinator;

(11) [(8)] Families shall be encouraged to discuss their child's activities, strengths, likes and dislikes, exhibited at home;

(12) [(9)] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits;

(13) [(10)] Every attempt shall be made to explain the child assessment process by using language the family uses and understands;

(14) [(11)] The families may agree, disagree, or refute the assessment information;

(15) [(12)] The family's interpretation and perception of the assessment results shall be ascertained and the families wishes and desires shall be documented as appropriate.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, 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: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, non-profit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

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

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and non-profit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public

health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for assessment and service planning.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amendment)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, 1998 GA HB 132

[EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of Primary Service coordination as it relates to First Steps, Kentucky's Early Intervention Program. House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996,] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Primary Service Coordination. (1) The primary service coordinator shall coordinate and assist in child find efforts with the local POE;

(2) The primary service coordinator shall make referrals to the POE within forty-eight (48) hours upon identification of a child that may be eligible for First Steps services. Referral shall be made after discussing the benefits of early intervention with the family and acquiring verbal permission to make the referral;

(3) The primary service coordinator shall utilize the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee for public awareness activities and materials;

(4) The primary service coordinator shall serve as the single point of contact in helping families obtain the services and assistance they need;

(5) The primary service coordinator shall have a caseload of:

(a) Up to forty (40); with a maximum of fifty (50) if ten (10) children are ninety (90) days away from their third birthday; if he is not providing any other First Steps services, or is not carrying a caseload in another program; or

(b) If he is providing other First Steps services to children and families or has a caseload in another program, up to the prorated equivalency of no more than a combined total of 100 percent of a position's time, with a forty (40) caseload being 100 percent in First Steps services, and the equivalent to forty (40) in another program. A caseload of ten (10) in First Steps would represent twenty-five (25) percent of a position's time, leaving the equivalency of seventy-five (75) percent available in another program.

(6) The primary service coordinator shall:

(a) Attend the First Steps Primary Service Coordination and IFSP training prior to facilitating, coordinating, or implementing any IFSP's, and attend communicating with families training within six (6) months of completing primary service coordination and IFSP training;

(b) Attend the initial IFSP meeting, if identified as primary service coordinator choice or if invited as a potential option for primary service coordinator, and help the POE facilitate that plan;

(c) Notify all the IFSP team members, in writing, of the upcoming annual IFSP or the six (6) month review date and location no less than thirty (30) calendar days prior to IFSP or review date;

(d) Provide reasonable notice to all the IFSP team members of any IFSP meeting requested to address revisions.

(e) In the event of cancellation, notification of the rescheduling of the IFSP meeting shall be sent to the IFSP members within five (5) working days of the cancelled meeting;

(f) [(e)] Facilitate the annual IFSP, [or] six (6) months reviews, and IFSP meetings requested to address revisions. This includes:

1. Documenting outcomes that have been achieved, as well as, documenting those that have not been achieved;
2. Assisting families in identifying new outcomes, the service providers, frequency and location of all services; and
3. Resolving any conflicts during the IFSP or review by having the

team come to consensus on any issue where differences occur;

4. Insure that outcomes are developed to relate to any changes and that appropriate documentation of the need for the changes occur.

5. Record any changes on the state IFSP form and secure appropriate signatures from required members.

6. Submit Summary Sheet to CBIS within five (5) days of the approval of the revision.

(g) [(f)] Refer the family to appropriate agencies for services identified on the IFSP and coordinating those services;

(h) [(g)] Send copies of the initial and subsequent IFSP reviews to the other team members within ten (10) working days of the IFSP meeting;

(i) [(h)] Send copies of the IFSP to those persons identified by the family as needing copies;

(j) [(i)] Notify the POE of any changes in the child's or family status and new IFSP services within five (5) working days of changes on the IFSP;

(k) [(j)] Facilitate the development of a transition plan;

(7) The primary service coordinator shall inform and assist the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook any time the family requests and at all IFSP meetings;

(b) Familiarizing him with the procedural safeguards and due process rules;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers;

(8) The primary service coordinator shall assist the family in identifying available service providers by:

(a) Assisting the POE in maintaining a current directory of available First Steps service providers;

(b) Keeping current on all available services in the district, including recent rules regarding funding sources;

(c) Having available to the families a list of all eligible First Steps service providers in each district. The family may choose a service outside the First Steps approved provider list, however, the primary service coordinator's responsibility to the family is to let them know that the provider is not approved through First Steps and may result in a cost to the family; and

(d) Assisting the POE in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(9) The primary service coordinator shall ensure that service coordination is available to his families at all times and at the family's request;

(10) The primary service coordinator shall contact the child's family at a minimum of one (1) time a month to discuss service coordination needs, unless otherwise stipulated in the IFSP;

(11) The primary service coordinator shall give the family his address and phone number and any other information that may be helpful, in the event they would need to contact the primary service coordinator;

(12) The primary service coordinator shall identify to the family and to the POE a back-up service coordinator for the family to call in the event the primary service coordinator will be gone over ten (10) consecutive working days;

(13) If the primary service coordinator can no longer serve in the role of primary service coordinator due to a resignation or unexpected reason the primary service coordinator shall:

(a) If there is at least one (1) week's time notify, in writing, the POE in each district, the family, and service providers and facilitate the identification of a new primary service coordinator; or

(b) If there is less than one (1) week's time, the primary service coordinator shall contact the POE in his district immediately. The POE shall contact the family to assist them in identifying a new primary service coordinator. The new primary service coordinator shall notify the other service providers that he is the new primary service coordinator;

(14) The primary service coordinator shall send to the POE all completed IFSPs, changes, and updates, which include the transition plan, no later than five (5) working days after the meeting has been held;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(15) In the event there is no primary service coordinator, or the family refuses service coordination, the POE shall coordinate and facilitate the IFSPs;

(16) The primary service coordinator shall maintain the child's record to ensure that changes are accurately documented. The minimum record to be maintained by the primary service coordinator shall include:

- (a) Initial referral information;
- (b) Developmental and social history;
- (c) All available evaluation reports;
- (d) All assessment reports;
- (e) All IFSP's;
- (f) All primary service coordinator notes;
- (g) All correspondence to the family and other service providers;
- (h) The transition plan; and
- (i) All billing information;

(17) The primary service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record. This documentation shall include a note which consists of:

- (a) The date of contact;
- (b) Amount of time spent;
- (c) Reason for the contact;
- (d) Type of contact whether by telephone or face to face;
- (e) Result of contact;
- (f) Plan for further action; and
- (g) Signature of person making contact;

(18) Primary service coordinator notes shall also include all contacts attempted but not made, and reasons why services were not delivered in a timely manner;

(19) The primary service coordinator shall notify the POE of all changes in the status of the child or family within five (5) working days of the changes;

(20) The primary service coordinator shall encourage the family to access all services identified on the individualized family service plan [available to them while enrolled in First Steps];

(21) If the family wants to voluntarily terminate a service or all services, the primary service coordinator shall:

(a) Document in the record which services are ending and the date of termination;

(b) Send a follow-up letter to the family which includes when and what services are ending, within seven (7) working days after notice from the family of their choice to end services;

(22) If the family is absent from a service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the primary service coordinator within seven (7) working days after last absence. Then the primary service coordinator shall:

(a) Document the service provider's contact and try to make contact to discuss the circumstances;

1. If contact is made send a letter within seven (7) working days to the providers the result of the discussion;

2. If no contact is made, send the family a letter within seven (7) working days requesting direction as to the choice of the family in continuation of services and stating that the services will cease until a choice is made by the family; and

(b) Notify the service providers whose services are changing, in writing, when services are terminated and the date of termination;

(23) The primary service coordinator shall be responsible for securing any release of information necessary to send or secure information from other service providers;

(24) The primary service coordinator shall close the child's record and send a copy of the primary service coordinator record to the referring POE within:

(a) Three (3) months after the child's third birthday, unless they state in writing that the record remain with the primary service coordinator due to continued service coordination services by the primary service coordinator after the child reaches age three (3). A copy of the written request from the family shall be sent to the POE;

(b) One (1) month after the child's family terminates all services and the child is no longer receiving any First Steps services;

(25) The primary service coordinator shall provide data to the cabinet upon request;

(26) The primary service coordinator shall agree to have any or all records maintained by said primary service coordinator monitored by the cabinet, or their designee;

(27) The primary service coordinator shall attend all required training prior to providing services and participate in required quarterly meetings;

(28) The primary service coordinator shall limit practice in First Steps to service coordination only.

Section 2. Assistive Technology. (1) To be eligible to access assistive technology services and devices the child shall:

- (a) Be eligible for First Steps;
- (b) Have need for assistive technology devices and services documented by appropriate assessment procedures; and
- (c) Have need for and use of assistive technology devices and services documented in the IFSP.

(2) The First Steps assistive technology review process shall be utilized for the following:

- (a) All equipment requests which exceed \$500; and
- (b) All equipment that is questionable by the initial service coordinator, the primary service coordinator, or cannot be determined by the IFSP team as appropriate.

(3) All equipment request requiring review shall:

(a) Be sent to the monitoring coordinator with the following information:

1. A current IFSP;
2. Assessments with recommendations;
3. Justification statement of specific devices based on needs;
4. Information regarding equipment or device request;
- (b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and
- (c) Complete process within ten (10) working days of receiving all information;

(4) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:

- (a) Consult with the appeal committee; and
- (b) Issue final decision.

(5) The decision of the First Steps coordinator may be appealed pursuant to 908 KAR 2:170.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, 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: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, non-profit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will

not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

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

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary

health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for primary service coordination.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amendment)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, 1998 GA HB 132 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program. House Bill 132 of the 1998 General Assembly [Executive Order-96-862, effective July 2, 1996,] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Covered Services. (1) Services ~~shall be~~ [are] covered when included and authorized in the individual's IFSP developed by an IFSP team which shall include, at least, the family and two (2) disciplines:

(a) At least two (2) disciplines shall be from separate agencies or represent different approved providers; and

(b) One (1) discipline shall be a licensed medical professional.

(2) Services covered ~~shall be~~ [are]:

(a) Service coordination as provided in accordance with 908 KAR 2:110 and 908 KAR 2:140:

1. A child shall have only one (1) designated service coordinator at a given time; and

2. Service coordination shall be provided by those identified in 908 KAR 2:150;

(b) Primary evaluation as provided in accordance with 908 KAR 2:120:

1. Primary evaluation shall be considered the first level of a ~~two (2) tier~~ [trilevel] system of evaluation; and

2. Primary evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(c) Intensive team evaluation as provided in accordance with 908 KAR 2:120:

1. Intensive team evaluation shall be considered the second level of a ~~two (2) tier~~ [trilevel] system of evaluation;

2. Intensive team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(d) ~~Tertiary team evaluation as provided in accordance with 908 KAR 2:120:~~

1. ~~Tertiary team evaluation shall be considered the third level of evaluation in a trilevel system of evaluation.~~

2. ~~Tertiary team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;~~

(e) Service assessment as provided in accordance with 908 KAR 2:130;

(f) Therapeutic intervention.

1. Therapeutic intervention includes three (3) types of service:

a. Individual home or community services which includes intervention provided to the child by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes); or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professionals office or center site; or

c. Group intervention which includes the provision of early intervention services by First Steps qualified personnel to an eligible child in a group at an early intervention professional's site, office, center, home or other community based setting where children under three (3) years of age are typically found. The group may also include chil-

dren without disabilities.

2. Disciplines providing therapeutic intervention shall be qualified in accordance with 908 KAR 2:150, and shall include the following:

a. An audiologist; or

b. A family therapist; or

c. A developmental interventionist; or

d. A developmental associate; or

e. A developmental assistant; or

f. A nurse; or

g. A LPN; or

h. A health aide; or

i. A nutritionist; or

j. A dietitian; or

k. An occupational therapist; or

l. An occupational therapy assistant; or

m. An orientation and mobility specialist; or

n. A physical therapist; or

o. A physical therapist assistant; or

p. A psychologist; or

q. A speech language pathologist; or

r. A speech language pathologist assistant; or

s. A licensed social worker; or

t. A teacher of the visually impaired; or

u. A teacher of the deaf and hard of hearing.

(f) [(g)] Integrated disciplines center-based service ~~shall be~~ [is] an intervention provided by an agency which offers services by at least three (3) of the following disciplines who qualify in accordance with 908 KAR 2:150:

1. Developmental interventionist; or

2. Developmental interventionist associate; or

3. Occupational therapist; or

4. Physical therapist; or

5. Speech therapist.

(g) [(h)] Collateral service ~~shall be~~ [is] the provision of consultation and planning directed toward the needs of the child with professionals while [parents, legal guardian, other persons in a position of custodial control, developmental professionals, or other clinicians responsible for the health of the child in accordance with the IFSP. These services shall include:

1. Professionals attending the IFSP meeting, and

2. Transdisciplinary consultation; and

3. Consultation by and with the child's physician.

(h) [(i)] Assistive technology in accordance with 908 KAR 2:100 and 908 KAR 2:140.

(i) [(j)] Respite ~~shall be~~ [is] a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs.

(j) [(k)] Transportation and related cost ~~shall be~~ [is] the costs of travel that are necessary to enable an eligible child to receive early intervention services.

(3) Rates for covered services ~~shall be~~ [are] negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, 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: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of Children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

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

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will

have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for covered services.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

administrative regulation relates.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amendment)**

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program Services.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, 1998 GA HB 132 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. House Bill 132 of the 1998 General Assembly [Executive Order-96-862, effective July 2, 1996;] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation Services and the First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made by the First Steps Program on behalf of eligible recipients.

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

(2) "Commercial transportation carrier" means a commercial carrier, including a taxi cab, that is licensed to transport a member of the general public.

(3) "Direct contact" means an activity or contact that is:

(a) Face to face or by telephone, with the child, or on behalf of the child, with the parent, family or person in custodial control, a professional or other service provider, or other significant person; and

(b) Not the direct supervision of a paraprofessional by a professional.

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

(5) "Noncommercial group carrier" means a vendor who provides bus or bus-type transportation to an identifiable segment of the population eligible for service from the carrier.

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

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

(8) "Provider" means an agency, person, or other entity that meets the requirements for approval as established in 908 KAR 2:100 through 908 KAR 2:180 and who signs an agreement with the department.

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

Section 2. Participation Requirements. (1) An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

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

(b) Meet, or employ or contract with a professional or staff who

meets the qualifications established in 908 KAR 2:150;

(c) Ensure:

1. [Ensure] That each professional or staff who is employed by the provider and provides a service in the First Steps Program shall attend a minimum of a one (1) day, not to exceed an eight (8) hour period, training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services; and

2. [Ensure] That each professional or staff who is employed by the provider and presently providing a First Steps service shall have evidence of equivalent training;

(d) Agree to provide First Steps services according to an individualized family service plan as required in 908 KAR 2:130;

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

(f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services; and

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

(2) The Department for Mental Health and Mental Retardation Services shall grant provider approval for participation to a provider who meets the criteria established in subsection (1) of this section.

Section 3. Reimbursement. The department shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the preestablished fixed upper limit taking into consideration information available to the department with regard to cost and the department's estimate as to the amount necessary to secure the service.

(1) A charge submitted to the department shall be the provider's usual and customary charge for the same service.

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

(a) Primary service coordination:

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

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

(b) Initial service coordination:

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

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

(c) Primary evaluation:

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

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

(d) Intensive clinic evaluation:

1. In the office or center-based site the fee shall be \$1,000 per service event.

2. In the community site the fee shall be \$1,000 per service event.

(e) Service assessment:

1. For an audiologist:

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

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

2. For a family therapist:

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

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

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

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

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

4. For a developmental interventionist:

a. In the office or center based site, the fee shall be eighty-three

(83) dollars per hour of direct contact service.

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

5. For a registered nurse:

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

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

6. For a nutritionist:

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

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

7. For a dietitian:

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

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

8. For an occupational therapist:

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

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

9. For an orientation and mobility specialist:

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

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

10. For a physical therapist:

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

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

11. For a speech therapist:

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

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

12. For a social worker:

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

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

13. For a teacher of the deaf and hard of hearing:

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

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

14. For a teacher of the visually impaired:

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

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

15. For an assistive technology specialist:

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

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

(f) [(e)] Therapeutic intervention and collateral services:

1. For an audiologist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be seventy (70) per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) per hour of direct contact service.

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

a. In the office or center based site, the fee shall be \$155 per hour of direct contact service.

b. In the home or community site, the fee shall be \$226 per hour

of direct contact service.

4. For a certified psychological associate:

a. In the office or center based site, the fee shall be \$116 per hour of direct contact service.

b. In the home or community site, the fee shall be \$170 per hour of direct contact service.

5. For a developmental interventionist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

6. For a developmental associate:

a. In the office or center based site, the fee shall be fifty-one (51) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.

8. For a registered nurse:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

9. For a licensed practical nurse:

a. In the office or center based site, the fee shall be twenty-four (24) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be thirty-two (32) dollars per hour of direct contact service.

10. For a nutritionist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

11. For a dietitian:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

12. For an occupational therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

13. For an occupational therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

14. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

15. For a physical therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

16. For a physical therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

17. For a speech therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

18. For a speech therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

19. For a social worker:

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

20. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

21. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

22. For a physician providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of direct contact service. A physician shall not receive reimbursement for therapeutic intervention.

23. For an assistive technology specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

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

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

(3) Except as specified in subsection (4) of this section, a payment for professional or staff services listed in subsection (2) of this section shall be based on a unit of service in fifteen (15) minutes increments.

(4) A payment for a primary or intensive ~~(an)~~ evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

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

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

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

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported;

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service, with a minimum of one (1) discipline who can practice without direct supervision shall be thirty-six (36) dollars per hour of direct contact service.

(8) A payment for a multidisciplinary ~~(an interdisciplinary)~~ group intervention service, with a minimum of two (2) disciplines who can practice without direct supervision, shall be forty-six (46) dollars per hour of direct contact service.

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

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

(3) For service assessment:

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

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

(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional meeting the qualifications in 908 KAR 2:150 unless preauthorized by the department; ~~except if the professional or discipline and paraprofessional is participating in a group. In a group setting, the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day unless preauthorized by the department.~~

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

(b) For home and community sites:

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

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

(c) For group:

1. In a group setting the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day, five (5) hours per week, unless preauthorized by the department.

2. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional or discipline and paraprofessional per group, unless preauthorized by the department.

(5) For respite, payment shall ~~be~~:

(a) ~~Be~~ limited to no more than eight (8) hours of respite per month, per eligible child.

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

Section 5. Sliding Fee. (1) Families are required to participate in the payment of services based on a sliding fee scale, except that no charge be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing all available sources of funding for early intervention services; and

(b) To give families an opportunity to assist with the cost of services where there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be an income-based flat monthly fee for the duration of participation in early intervention services, as determined by:

1. Level of family gross income identified on last Federal Internal Revenue Service statement, as reported by family;

2. Level of income matched with level of poverty scale.

(b) Not apply to children eligible for Medicaid;

(c) Not prevent a child from receiving services if family shows to the satisfaction of the department an inability to pay.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held September 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who

attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, 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: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need for future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for coverage and payments.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 14, 1998

REVENUE CABINET
Department of Law
Division of Tax Policy
(New Administrative Regulation)

103 KAR 7:011. Repeal of 103 KAR 7:010 and 103 KAR 7:020.

RELATES TO: KRS 132.420, 140.250, 140.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: Administrative regulation 103 KAR 7:010 authorizes and directs property valuation administrators and their approved deputies to be present and inventory the contents when safe deposit boxes are opened under the provisions of KRS 140.250. It further authorizes and directs them to issue releases of inheritance tax liability in accordance with the Revenue Cabinet's instructions and procedures. Due to the elimination of the inheritance tax on inheritances received by Class A beneficiaries effective for deaths on or after July 1, 1998, it is no longer prudent or cost effective for the Revenue Cabinet to inventory safe deposit boxes or to require that a lien release be obtained prior to the transfer of the decedent's property since only a small percentage of the contents of these boxes and other assets will pass to beneficiaries that must pay inheritance tax (Classes B and C). Administrative regulation 103 KAR 7:020 authorizes financial institutions to release or transfer certain funds without withholding an amount to cover any inheritance tax liability and without the necessity of acquiring the written consent of the Revenue Cabinet. Due to the elimination of the inheritance tax on inheritances received by Class A beneficiaries effective for deaths on or after July 1, 1998, it is no longer prudent or cost effective for the Revenue Cabinet to require financial institutions to acquire a specifically written consent from the Revenue Cabinet or to provide the written notice to the cabinet as required by this administrative regulation. This proposed administrative regulation eliminates the requirements established by these two (2) administrative regulations that are no longer useful or needed.

Section 1. 103 KAR 7:010 and 103 KAR 7:020 are hereby repealed.

SARAH JANE SCHAAF, Secretary
ALEX W. ROSE, Commissioner

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 29, 1998, at 10 a.m. local prevailing time at 200 Fair Oaks Lane, Third Floor - Training Room A, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 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 cancelled. The 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: Bruce McCutchen, Tax Consultant, Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, (502) 564-6843, Fax: (502) 564-9565.

REGULATORY IMPACT ANALYSIS

Contact Person: Bruce McCutchen

(1) Type and number of entities affected: All financial institutions doing business in Kentucky and all 120 property valuation administrators, 11 Revenue Cabinet Taxpayer Service Centers and several units and sections within the Revenue Cabinet that handle or process

requests for inheritance tax lien releases and inventories of safe deposit boxes.

(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: 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: This proposed administrative regulation repeals two existing administrative regulations that involve the inventorying of safe deposit boxes and the issuance of inheritance tax lien releases.

2. Second and subsequent years: The effect will be the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. The two administrative regulations that are being repealed are in conflict with an administrative action taken in June 1998 which grants a blanket inheritance tax lien release on all accounts and eliminates the necessity of inventorying safe deposit boxes. The savings have already occurred as a result of the previous action taken by the Revenue Cabinet.

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: There are no revenue implications since these occurred as a result of administrative actions previously taken by the Revenue Cabinet.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were none since the purpose of this administrative regulation is to repeal two existing regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

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

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

(a) Necessity of proposed regulation if in conflict: The existence of the two administrative regulations are in conflict with administrative actions taken by the Revenue Cabinet which does not require the inventory of safe deposit boxes or the issuance of specific lien releases.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The administrative regulations are being repealed.

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 impact. All 120 property valuation administrators and their office staff will be impacted.

3. State the aspect or service of local government to which this administrative regulation relates. This proposed administrative regulation repeals two existing administrative regulations that are not in harmony with administration actions taken by the Revenue Cabinet which eliminate the requirement for the Property Valuation Administrators to be present at the opening of safe deposit boxes held in the name of a decedent and from having to issue inheritance tax lien releases on the contents of the boxes and other financial accounts held by the financial institution on behalf of the decedent's estate.

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. Recent administrative actions taken by the Revenue Cabinet eliminated the Property Valuation Administrators' involvement in the inventorying of safe deposit boxes and the issuance of inheritance tax lien releases. Before the actions were taken, it is estimated that equivalent of 15 to 20 of the total staff employed by the 120 property valuation administrators statewide were assigned to the process of inventorying safe deposit boxes and the issuance of lien releases.

Expenditures (+/-): None

Other explanation: The savings in time that was customarily consumed in the process of inventorying safe deposit boxes and issuing inheritance tax lien releases will be redirected toward other duties of the property valuation administrators' offices.

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1)(a), 216A.080(1)(f)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(a) authorizes the Kentucky Board of Licensure for Nursing Home Administrators to develop, impose, and enforce standards which must be met by an individual in order to receive a license. KRS 216A.080(1)(f) authorizes the board to set other requirements to be met so long as they are uniform and applied to each applicant for a license. KRS 216A.080(1)(e) requires an applicant to pass an examination administered by the board. This administrative regulation establishes the other requirements for licensure and sets limits on the taking of the examination.

Section 1. An applicant for a license as a nursing home administrator shall in addition to meeting all of the requirements provided by KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from an accredited college or university;

(2)(a) Have six (6) months of continuous management experience in a health care facility within three (3) years of the date of application. The management experience shall include evidence of responsibility for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management; and
4. Public relations.

(b) A preceptorship or internship, that is at least six (6) months in length, which is a part of degree in long-term care administration or a related field, shall satisfy the experience requirement established in paragraph (a) of this subsection.

Section 2. (1) The examination for licensure established by KRS 216A.080(1)(e) shall be the examination prepared by the National Association of Boards of Examiners for Nursing Home Administra-

tors.

(2) An applicant shall be permitted to sit for the examination no more than three (3) times within twenty-four (24) months.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a nursing home administrator in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

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

1. First year following implementation: Any person wishing to become licensed as a nursing home administrator will be required to complete these requirements.

2. Second and subsequent years: Any person wishing to become licensed as a nursing home administrator will be required to complete these requirements.

(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: A person's application materials will have to be reviewed and processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The

credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:030. Temporary permits.

RELATES TO: KRS 216A.070(4)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) authorizes the board to issue a temporary permit to an individual to practice the art of nursing home administration. This administrative regulation establishes the requirements for issuance of a temporary permit.

Section 1. (1) A temporary permit to practice as a nursing home administrator may be granted to an applicant if:

(a) The applicant has applied for licensure under the provisions of KRS Chapter 216A;

(b) The applicant has completed all of the requirements for licensure except the examination; and

(c) The facility where the applicant is to be employed as the administrator is without a licensed administrator.

1. The facility owner shall provide a written request and supporting information to the board indicating that an emergency situation exists.

2. An emergency situation exists when the facility is without a licensed nursing home administrator and no licensed nursing home administrator is reasonably available to fill the position.

(2) The request for temporary permit shall include payment of the temporary permit fee as established in 201 KAR 6:060(2).

Section 2. A temporary permit shall not be transferred.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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 ad-

ministrative regulation to: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for a temporary permit as a nursing home administrator 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 appropriate fee for a temporary permit must be paid.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: The appropriate fee for a temporary permit must be paid.

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

1. First year following implementation: Any person wishing to receive a temporary permit as a nursing home administrator will be required to complete these requirements.

2. Second and subsequent years: Any person wishing to receive a temporary permit as a nursing home administrator will be required to complete these requirements.

(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: A person's application materials for a temporary permit will have to be reviewed and processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(New Administrative Regulation)

201 KAR 6:040. Renewal of license.

RELATES TO: KRS 216A.090

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 requires the holder of a license to renew his license biennially. This administrative regulation establishes the requirements for renewal, late renewal, inactive licensure and reinstatement of a license.

Section 1. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal.

(a) A licensee shall pay to the board the appropriate renewal fee established in 201 KAR 6:060 for the renewal of his license.

(b) A license not renewed on or before the renewal date shall expire based on the failure of the licensee to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after the renewal date, during which time a licensee may continue to practice and may renew his license upon payment of the late renewal fee established in 201 KAR 6:060.

(a) A license not renewed by the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner.

(b) Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(3) A license shall be deemed inactive if:

(a) A licensee submits to the board a written request seeking inactive status;

(b) A licensee pays to the board the inactive licensee fee established in 201 KAR 6:060 for an inactive license;

(c) The grace period established in subsection (2) of this section has not expired; and

(d) The license is in good standing when the inactive status request is received.

(4)(a) After the sixty (60) day grace period, an individual with a terminated license may have his license reinstated upon payment of the reinstatement fee established in 201 KAR 6:060.

(b) A person who applies for reinstatement after termination of his license shall not be required to meet current licensure requirements, except those established in 201 KAR 6:070(9), if reinstatement application is made within two (2) years from the date of termination.

(5) A licensee who fails to reinstate his license within two (2) years after its termination may not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements of this chapter.

(6) A suspended license is subject to expiration and termination and shall be renewed as provided in this administrative regulation. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(7) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (2) of this section and the renewal fee as set forth in subsection (1) of this section.

(8) A licensee applying for renewal, late renewal, or reinstatement of licensure shall show evidence of completion of continuing education as established by 201 KAR 6:070.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for renewal, reinstatement, or inactive status as a nursing home administrator 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 appropriate fee must be paid.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: The appropriate fee must be paid.

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

1. First year following implementation: Any person wishing to renew, reinstate, or request inactive status as a nursing home administrator will be required to complete these requirements.

2. Second and subsequent years: Any person wishing to renew, reinstate, or request inactive status as a nursing home administrator will be required to complete these requirements.

(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: A licensee's request for renewal, reinstatement, or inactive status will have to be processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:050. Licensure by endorsement.

RELATES TO: KRS 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.130 allows the board to issue a license to a nursing home administrator possessing a license issued by any other state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board may issue a license by endorsement, without examination, to a nursing home administrator currently licensed by examination by the proper authorities of any other state upon:

(1) Verification that he meets all current requirements for licensure as established by KRS 216A.080 and 201 KAR 6:020, except for KRS 216A.080(e), or that he is currently designated as a certified nursing home administrator by the American College of Health Care Administrators;

(2) Payment of the fee for licensure by endorsement as established by 201 KAR 6:060;

(3) Verification of his license issued by another state which indicates that his license is:

(a) Active;

(b) Valid;

(c) In good standing; and

(d) There are no unresolved complaints pending against his license.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a nursing home administrator in Kentucky by endorsement.

(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 appropriate fee must be paid.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: The appropriate fee must be paid.

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

1. First year following implementation: Any person wishing to apply for licensure by endorsement as a nursing home administrator will be required to complete these requirements.

2. Second and subsequent years: Any person wishing to apply for licensure by endorsement as a nursing home administrator will be required to complete these requirements.

(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: A licensee's request for licensure by endorsement will have to be processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.110(1), 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.110(1)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 216A.110(1) and 216A.130 and sets forth in detail all fees charged by the board.

Section 1. Application Fee. (1) The application fee for board

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

review of the application for licensure shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee shall be \$150 for an applicant for licensure.

(2) The fee for licensure by endorsement shall be \$250 for an applicant for licensure.

(3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be fifty (50) dollars.

Section 4. Examination Fees. The fee for taking or retaking the written examination shall be \$125.

Section 5. Renewal Fee, Late Renewal Fee, Inactive License Fee and Reinstatement Fee. (1) The renewal fee shall be \$100.

(2) The late renewal fee shall be \$150.

(3) The inactive license fee shall be fifty (50) dollars.

(4) The fee for reactivating an inactive license shall be fifty (50) dollars.

(5) The reinstatement fee shall be \$300.

Section 6. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 7. Licensure Verification Fee. The fee for verification of state licensure shall be fifteen (15) dollars.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a nursing home administrator 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 appropriate fee must be paid.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: The appropriate fee must be paid.

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

1. First year following implementation: Any person wishing to apply or holding licensure as a nursing home administrator will be required to complete these requirements.

2. Second and subsequent years: Any person wishing to apply or holding licensure as a nursing home administrator will be required to complete these requirements.

(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 listed fees will have to be received and processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:070. Continuing education requirements.

RELATES TO: KRS 216A.090

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 authorizes the board to promulgate an administrative regulation requiring a licensed nursing home administrator to complete continuing education requirements as a condition of renewal of his licensure. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

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

(1) "Approved" means recognized by the Kentucky Board of Licensure for Nursing Home Administrators.

(2) "Continuing education hour" means sixty (60) clock minutes of participating in continuing educational experiences.

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(4) "Academic courses offered by an accredited postsecondary institution" means:

(a) A nursing home administration course designed by a nursing home administration course title or content; or

(b) An academic course, relevant to nursing home administration.

(c) A general education course, either electives or designed to meet degree requirements, shall not be acceptable.

(d) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Relevant" means having content applicable to the practice of nursing home administration as determined by the board.

(6) "Provider" means an organization approved by the Kentucky Board of Licensure for Nursing Home Administrators for providing continuing education programs.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of thirty (30) continuing education hours shall be accrued by each person holding licensure during the two (2) year period for renewal.

(2) All continuing education hours shall be in or related to the field of nursing home administration.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a nursing home administrator. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of nursing home administration and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Association of Boards of Licensure for Nursing Home Administrators (NAB) or any other board of licensure which is a member of NAB;

(b) Sponsored by:

1. The American Association of Homes and Services for the Aging, or any of its affiliated state chapters;

2. The American College of Health Care Administrators, or any of its affiliated state chapters;

3. The American College of Healthcare Executives;

4. The American Health Care Association, or any of its affiliated state chapters;

5. The American Hospital Association or any of its affiliated state chapters;

6. The Kentucky Board of Nursing;

(c) A college course directly related to business administration, economics, marketing, computer science, social services, psychology, gerontology, or health professions such as nursing or premedicine;

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and determined if they are relevant and therefore subsequently approved by the board.

(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit may be granted only for an article that was published within the two (2) year period immediately preceding the renewal date. A licensee may only earn one-half (1/2) of the continuing education hours required for a relevant publication. Only one (1) publication may be counted during each renewal period.

Section 4. Procedures for approval of Continuing Education Programs. A course which has not been preapproved by the board may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review this

program, the following information shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;

(4) Number of continuing education hours requested;

(5) Official certificate of completion or college transcript from the sponsoring agency or college; and

(6) Application for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2 of this administrative regulation; and

2. Does not exclude any licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the practice of nursing home administration;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptance to the board.

Section 6. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain his own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) During the two (2) year licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;

2. Certificates;

3. Affidavits signed by instructors; or

4. Receipts for fees paid to the sponsor; and

(f) Each licensee shall retain copies of his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as estab-

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

lished in Section 5(4) of this administrative regulation, directly to the licensee.

(2) Providers of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) He may request, and the board, at its discretion, may allow him to resume practice, with the provision that he shall receive thirty (30) hours continuing education within six (6) months of the date on which he is approved to resume practice.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons holding licensure as a nursing home administrator 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: Licensees will be required to receive the required continuing education.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: Licensees will be required to receive the required continuing education.

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

1. First year following implementation: Licensees will be required to retain the required documentation of continuing education and furnish it to the board upon request.

2. Second and subsequent years: Licensees will be required to retain the required documentation of continuing education and furnish it to the board upon request.

(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 required documentation will have to be received and processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(New Administrative Regulation)

201 KAR 6:080. Code of ethics.

RELATES TO: KRS 216A.070(1)(a), (c), (d)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 216A.070(1)(a) requires the board to develop, impose, and enforce standards which must be met by individuals licensed as nursing home administrators. KRS 216A.070(1)(c) requires the board to discipline individuals who fail to meet those standards after licensure. KRS 216A.070(1)(d) requires the board to establish and carry out procedures to insure compliance with the established standards. This administrative regulation establishes a code of ethics as a portion of the standards which shall be met in compliance with KRS 216A.070(1)(a), (c), and (d).

Section 1. Definitions. (1) "Nursing home administrator" means an individual responsible for the operation of a nursing home, as defined under KRS 216A.010(2).

(2) "Nursing facility" means an institution licensed pursuant to 902 KAR 20:300 and 902 KAR 20:008.

(3) "Resident" means individual who resides as a patient in a nursing facility, pursuant to 900 KAR 2:060(1), (4).

Section 2. Responsibility to Residents. (1) A nursing home administrator shall:

- (a) Advance and protect the welfare of the resident;
 - (b) Respect the rights of persons seeking service;
 - (c) Operate the facility consistent with laws and administrative regulations applicable to nursing facilities under KRS Chapter 216; and
 - (d) Have the duty to report to the proper authorities any knowledge of resident abuse, pursuant to KRS Chapter 209.
- (2) A nursing home administrator shall not:
- (a) Provide services other than those for which he is prepared and qualified to perform;
 - (b) Discriminate against or refuse professional service to anyone on the basis of race;
 - (c) Misrepresent qualifications, education, experience or affiliations;
 - (d) Exploit the trust and dependency of a resident;
 - (e) Participate in activities that reasonably may be considered to create a conflict of interest, or have the potential to have a substantial adverse impact on the facility, its residents or its staff;
 - (f) Engage in a sexual relationship or sexual contact, as defined under KRS 510.010(7), with a resident;
 - (g) Engage in sexual or other harassment or exploitation of a resident, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and disciplinary proceedings.

Section 3. Confidentiality. A nursing home administrator shall not divulge confidential information, except:

- (1) As mandated, or permitted by law;
- (2) To prevent a clear and immediate danger to a person or persons;
- (3) If the nursing home administrator is a defendant in a civil, criminal, or disciplinary action arising from the services provided, confidences may be disclosed only in the course of that action; or
- (4) If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.

Section 4. Professional Competence and Integrity. A nursing home administrator shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

- (1)(a) Conviction of a felony, or a misdemeanor related to the practice as a nursing home administrator.
- (b) Conviction shall include conviction based on:
 - 1. A plea of no contest or an "Alford Plea"; or
 - 2. The suspension or deferral of a sentence.

(2) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of nursing home administration;

(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of license;

(5) Refusing to comply with an order issued by the board; or

(6) Failing to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Furnishing documentation requested by the board regarding a complaint;

(c) Appearing before the board at the time and place designated; or

(d) Properly responding to subpoenas issued by the board;

(7) Violating any state statute or administrative regulation governing the practice of nursing home administration.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons holding licensure as a nursing home administrator 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: Licensees will be required to follow the code of ethics.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: Licensees will be required to follow the code of ethics.

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

1. First year following implementation: Licensees will be required to comply with the code of ethics.

2. Second and subsequent years: Licensees will be required to comply with the code of ethics.

(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: Complaints relative to the code of ethics will have to be received and processed.

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

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these qualifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Nursing Home Administrators (New Administrative Regulation)

201 KAR 6:090. Complaint management process.

RELATES TO: KRS 216A.070(1)(e)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(e) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 216A. This administrative regulation establishes the detailed procedures for the investigation of complaints received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 216A or the administrative regulations promulgated thereunder.

(3) "Complaint" means any written allegation alleging misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 216A, the administrative regulations promulgated thereunder, any other state or federal statute or regulation, or any notification which relates to the credential of the individual pursuant to KRS Chapter 216A. "Notification of Substandard Care" issued by the Cabinet for Health Services, as defined in 42 CFR 488.301, shall be considered a complaint.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal action.

(5) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to

assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Standards of practice committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. At least one (1) of these persons shall be a board member who is a nursing home administrator and at least one (1) of these persons shall be a board member who is not a nursing home administrator. The executive director of the board or another staff member may be appointed to serve on this committee.

Section 2. Receipt of Complaints. (1) Complaints may be submitted by an individual, organization, or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have five (5) days from the receipt to submit a written reply to the response.

(3) Upon receipt of a notification of substandard care, a copy of the notification shall be sent to the individual along with a letter from the board requesting the following information:

(a) The effective date of that administrator becoming the administrator of record for the facility. If that has occurred within the last 180 days, the facility shall furnish the name of the previous administrator.

(b) Copy of completed and approved 2567L and Notice of Acceptance of Allegation of Compliance;

(c) Copy of Notice of Results of Revisit; and

(d) Formal notice of any remedies imposed, if applicable.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the standards of practice committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall dismiss the complaint and shall notify both the complaining party and the individual of the outcome of the complaint.

(3)(a) When, in the opinion of the board, a complaint warrants a formal investigation against either a licensed individual or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the standards of practice committee at the earliest opportunity.

(b) In the case of a notification of substandard care, the board may either open a formal investigation or proceed under Section 4(3) of this administrative regulation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the standards of practice committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and a complaint should be filed.

(2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a licensee, the standards of

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

practice committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(4) When, in the opinion of the board, a person may be practicing without appropriate credential, it may:

(a) Issue a letter ordering that person to cease and desist from the unlicensed practice of nursing home administration;

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 216A.150 and 216A.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of nursing home administration.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel and the standards of practice committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(a) Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(b) The board may employ mediation as a method of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the licensee when in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the licensee.

(c) The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file.

(d) The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 6. Notice and Service Process. Any notice required by KRS Chapter 216A or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons holding licensure as a nursing home administrator 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 are received: None

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

1. First year following implementation: Licensees will be required to comply with the requirements of the complaint management process.

2. Second and subsequent years: Licensees will be required to comply with the requirements of the complaint management process.

(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: Complaints will have to be received and processed.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public is protected by having nursing home administrators meet these requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

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

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Administrative Regulation)

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

RELATES TO: KRS 311.595(9), 311.597(4)
STATUTORY AUTHORITY: KRS 311.565, 311.601

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Definitions. (1) "Authorized individual" means any person, not otherwise licensed or certified to use the automated external defibrillator, who has met the training standards of these guidelines, and has been issued a prescription by the prescribing physician for use of an automated external defibrillator on a patient not specifically identified at the time the physician's prescription is given.

(2) "Automated external defibrillator" or "AED" means an external defibrillator capable of cardiac rhythm analysis which will charge and, with or without further operator action, deliver a shock after electronically detecting and assessing ventricular fibrillation or rapid ventricular tachycardia. These devices are known as fully or semi-automatic defibrillators.

(3) "Cardiopulmonary resuscitation" or "CPR" means a basic emergency procedure for life support, consisting of artificial respiration and manual external cardiac massage.

(4) "Internal Emergency Response System" means a plan of action and responders within a facility to activate the "911" emergency system, and which provides for the access, coordination, and management of immediate medical care to seriously ill or injured individuals.

(5) "Prescribing physician" means a physician, licensed in Kentucky, who issues a written order for the use of the automated external defibrillator to authorized individual(s), and who develops, implements, and maintains the medical control provisions specified in these guidelines.

Section 2. General Training Provisions. (1) Any physician licensed in Kentucky may authorize an individual to apply and operate an AED on an unconscious, pulseless, patient who is apneic or has agonal respirations, only if that authorized individual has been successfully trained according to the standards prescribed by these guidelines.

(2) The training standards prescribed by these guidelines shall not apply to licensed, certified or other prehospital emergency medical personnel as defined by KRS 211.964 and 311.654.

(3) An individual shall be eligible for the training prescribed in these guidelines if the person has successfully completed a BLS providers course within the past two (2) years, and has demonstrated proficiency in CPR practices to the satisfaction of the prescribing physician.

Section 3. Training Standards. The training shall consist of not less than four (4) hours, shall conform with the American Heart Association (AHA) recommended curriculum for a providers course in the use of automated external defibrillators, and shall include the following topics and skills:

- (1) Proper use, maintenance and periodic inspection of the AED;
- (2) The importance of:
 - (a) CPR;
 - (b) Defibrillation;
 - (c) Advanced life support;
 - (d) Internal emergency response system;
- (3) Overview of the local EMS system, including 911 access, and interaction with EMS personnel;
- (4) Assessment of an unconscious patient to determine if cardiac arrest has occurred and the appropriateness of applying and activating an AED;
- (5) Information relating to defibrillator safety precautions to enable the individual to administer shock without jeopardizing the safety of the patient or the authorized individual or other nearby persons;
- (6) Recognition that an electrical shock has been delivered to the patient and that the defibrillator is no longer charged;

(7) Rapid, accurate assessment of the patient's postshock status to determine if further activation of the AED is necessary; and

(8) Authorized individual's responsibility of continuation of care, such as the repeated shocks if necessary, and/or accompaniment to the hospital, if indicated, or until the arrival of more medically qualified personnel.

Section 4. Medical Control. (1) Before prescribing and authorizing the use of the AED, the prescribing physician shall establish appropriate policies and procedures which shall include:

(a) A description of the utilization of the AED, including written medical protocols which may include, but are not limited to, authorization of personnel, standing orders and case-by-case reviews;

(b) Provisions to comply with any local EMS agency's policies and procedures;

(c) A mechanism for the training and testing of the authorized individual in the use of the AED;

(d) A mechanism that will assure the continued competency of the authorized individual to include periodic training, and skill proficiency demonstrations annually, with more frequent training and proficiency demonstrations in the discretion of the medical director, monitored by either the prescribing physician, or his/her designee (which may be another authorized individual);

(e) A method of medical control to include reviews of each incident of application and the recording of such, either by means of magnetic tape or other suitable storage; and

(f) The conditions for the rescission or termination of the authorization for the utilization of the AED.

(2) The prescribing physician may suspend, limit or terminate an individual's authority to use the AED. Notification to the individual will be in writing. If the individual is part of an internal emergency response system, the individual's employer shall also be notified in writing.

(3) Testing. In order for an individual to be authorized to use the AED, the individual shall pass a written and skills examination, to be determined by the prescribing physician, which tests the ability to assess and manage the specified conditions prescribed in Section 3 of this administrative regulation.

(4) Written validation. The prescribing physician shall issue to the authorized individual a written validation or other documented proof of the authorized individual's ability to use an AED.

DANNY M. CLARK, President

DONNA L. DELAHANTY, Assistant General Counsel

APPROVED BY AGENCY: August 6, 1998

FILED WITH LRC: August 11, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation, Reg. No. 201 KAR 9:320, to current administrative statutes and regulations will be held on the 28th day of September, 1998, at 1 p.m., eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify Donna L. Delahanty, Assistant General Counsel, Kentucky Board of Medical Licensure, in writing by September 21, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: Donna L. Delahanty, Assistant General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, Fax: (502) 429-9923.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna L. Delahanty

(1) Type and number of entities affected: All physicians involved in training or supervision of noncertified individuals utilizing automatic external defibrillators and agencies whose employees or members who use automatic external defibrillators.

(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 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 the cost of doing business.

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

1. First year following implementation:
2. Cost of training requirement and proficiency testing.
3. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: Paperwork and staff workload will increase.

(a) Direct and indirect costs or savings: None

1. First year: No change
2. Continuing costs or savings: none
3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No increase in 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: Public funds.

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

(a) Geographical area in which administrative regulation will be implemented: Commonwealth of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternative methods suggested were less medical supervision and less frequent training and proficiency demonstrations. Medical supervision was left unchanged because of FDA definition of AED as prescription device. Regulation will be amended to require less frequent training and proficiency demonstrations unless otherwise required by the supervising physician.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Benefits public health in making the AED available outside the hospital setting. No effect on the environment.

(b) State whether a detrimental effect on environment and public health would result if no 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:

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board believes this regulation will protect the citizens of the Commonwealth as well as provide a necessary health benefit.

(11) TIERING: Is tiering applied? No. There is no reason to impose varying requirements on physicians.

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 affects. City of Louisville Firefighters.

3. State the aspect of service of local government to which this administrative regulation relates: Use of automatic external defibrillators.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full

year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Other Explanation: The purpose of the regulation is to assure that noncertified individuals have physician training in the use of automatic external defibrillators. The effect of this administrative regulation on the expenditures and revenues of the City of Louisville will be small. The amount to expend would be decided by the City of Louisville and depend on how many firefighters the city wishes to train, the amount of training needed considering the present status of the firefighters experience and training, and how many automatic external defibrillators the city wishes to add to its present stock.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (New Administrative Regulation)

201 KAR 20:091. Repeal of 201 KAR 20:090.

RELATES TO: KRS 314.101(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 20:090 is no longer required because the board will no longer issue temporary work permits to applicants for licensure by examination.

Section 1. 201 KAR 20:090, Temporary work permit, is hereby repealed.

Section 2. The repeal will not affect any new graduates who apply for licensure prior to January 1, 1999.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: July 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on September 25, 1998 at 10 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 September 18, 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, fax: (502) 329-7011.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Applicants for licensure by examination. Number unknown.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings
 - 1. First year: The agency will have savings since temporary work permits will no longer be issued for exam applicants. The amount is unknown.
 - 2. Continuing costs or savings: Unknown
 - 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: paperwork will decrease.
- (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: Board's general operating fund.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: 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: No
 - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments:
 - (11) TIERING: Is tiering applied? No. The provisions apply equally to all affected individuals.

**NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)**

401 KAR 5:002. Definitions of terms for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Parts 35, 116, 130, 136, 401 - 471, 33 USC 1288, 1313(e), 1314(b), 1342

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 40 CFR Parts 116, 130, 136, 401 - 471, 33 USC 1288, 1313(e), 1314(b), 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 CFR Parts 116, 136, 401 - 471, and the planning requirements in 40 CFR Part 130; there are no definitions that are more stringent than federal requirements.

Section 1. Definitions. (1) "Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to

regulation under the KPDES program.

(3) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

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

(5) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(6) "Animal feeding operation" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a) 1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(7) "Animal unit" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

N_1 = Number of slaughter and feeder cattle;

N_2 = Number of mature dairy cattle;

N_3 = Number of swine weighing over twenty-five (25) kg;

N_4 = Number of sheep; and

N_5 = Number of horses.

(8) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(9) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(10) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(11) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(12) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(13) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(14) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(15) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(16) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for WWTPs with an average daily design capacity larger than 1,000 gpd. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capac-

ity to carry the additional flow; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(17) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(18) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(19) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(20) "Barrel" means forty-two (42) U.S. gallons.

(21) "BAT" means best available technology economically achievable.

(22) "BCT" means best conventional pollutant control technology.

(23) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(24) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(25) "BMPs" means best management practices.

(26) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(27) "BOD" or "BOD₅" means biochemical oxygen demand.

(28) "BPT" means best practicable technology currently available.

(29) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.

(30) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(31) "Bypass" means the intentional diversion of sewage or wastestreams from a portion of a facility or industrial user's treatment facility.

(32) "°C" means degrees Celsius.

(33) "CAH" means cold water aquatic habitat.

(34) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

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

(36) "CBOD" means carbonaceous biochemical oxygen demand.

(37) "CEC" means cation exchange capacity.

(38) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(39) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(40) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(41) "cfm" means cubic feet per minute.

(42) "CFR" means Code of Federal Regulations.

(43) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(44) "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(45) "COD" means chemical oxygen demand.

(46) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(47) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(48) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(49) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(50) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, 5:009, and 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;
2. 700 mature dairy cattle, whether milked or dry cows;
3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7. 100,000 laying hens or broilers if the facility has continuous overflow watering;

8. 30,000 laying hens or broilers if the facility has a liquid manure system;

9. 5,000 ducks; or

10. 1,000 animal units; or

(b) 1. More than the following number and types of animals are confined:

- a. 300 slaughter or feeder cattle;
- b. 200 mature dairy cattle, whether milked or dry cows;
- c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers if the facility has continuous overflow watering;
- h. 9,000 laying hens or broilers if the facility has a liquid manure system;
- i. 1,500 ducks; or
- j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth

which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(51) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(52) "Consolidation sewer" means a conduit, without direct sanitary connections, which intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(53) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(54) "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(55) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(56) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(57) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(58) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(59) "CSO" means combined sewer overflow.

(60) "CWA" means the Clean Water Act, as amended.

(61) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(62) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(63) "Day" means a twenty-four (24) hour period.

(64) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

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

(66) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channeled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(67) "Discharge monitoring report" or "DMR" means the report

including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(68) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(69) "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(70) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(71) "DMR" means discharge monitoring report.

(72) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(73) "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(74) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(75) "Draft permit" means a document prepared under 401 KAR 5:009 or 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:009 or 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(76) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(77) "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(78) "DWS" means domestic water supply.

(79) "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(80) "Effluent lagoon" means a treatment lagoon.

(81) "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(82) "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(83) "Engineer" means a professional engineer.

(84) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(85) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(86) "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.

(87) "Excessive infiltration" means a high groundwater period induced peak infiltration rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly. For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(88) "Excessive inflow" means a rainfall induced peak inflow rate

which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(89) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(90) "°F" means degrees Fahrenheit.

(91) "Facility" means:

(a) For purposes of 401 KAR 5:005, 5:006, or 5:009, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090;

(b) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(c) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(92) "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(93) "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

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

(95) "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage when a flood control structure or overflow detention basin is in operation.

(96) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(97) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(98) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(99) "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(100) "GPD" or "gpd" means gallons per day.

(101) "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(102) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(103) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(104) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(105) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(106) "Hydraulic gradient" means the vertical distance measured from the surface of the swine waste in the lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by the thickness of the

liner.

(107) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(108) "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(109) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(110) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a non-domestic industrial source regulated by the program.

(111) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(112) "Industrial user" or "user" means a source of indirect discharge.

(113) "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

(114) "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(115) "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(116) "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source which directs rainwater into the sewer system.

(117) "Injection" means, for purposes of 401 KAR 5:009, a type of land application in which the waste is placed directly beneath the land surface.

(118) "Intended use plan" means that document developed by the cabinet annually or biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.

(119) "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(120) "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(121) "Intermediate nonpublicly-owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(122) "Intermediate WWTP" means:

(a) WWTP with an average daily design capacity of 10,000 to 49,999 gpd; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.

(123) "Interstate agency" means an agency of which Kentucky and

one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(124) "IWWTP" means an industrial WWTP.

(125) "KAR" means Kentucky Administrative Regulations.

(126) "Karst" means the type of geologic terrane underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

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

(128) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(129) "Kentucky Intermunicipal Operational Permit" or "KIMOP" means a permit issued pursuant to 401 KAR 5:005 for operating a publicly-owned sewer system which has more than 5,000 linear feet of sewer line which discharges to a sewer system, or a WWTP which is owned by another person.

(130) "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(131) "kg" means kilograms.

(132) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(133) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(134) "KRS" means Kentucky Revised Statutes.

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

(136) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(137) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(138) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(139) "Large nonpublicly-owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(140) "Large WWTP" means:

(a) A WWTP with an average daily design capacity of 50,000 GPD

or more; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.

(141) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(142) "Long-term CSO control plan" means a control plan which complies with the "Combined Sewer Overflow Control Policy" issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(143) "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope;

(c) The term does not include replacement of an entire WWTP with a new WWTP.

(144) "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(145) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(146) "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(147) "Major outfall" means a major municipal separate storm sewer outfall.

(148) "Manmade" means constructed by humans.

(149) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(150) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(151) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(152) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(153) "mgd" or "MGD" means million gallons per day.

(154) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(155) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(156) "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(157) "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(158) "Minor modification to a WWTP" means, for purposes of construction approvals required by 401 KAR 5:005, a modification which does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(159) "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a POTW.

(160) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(161) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(162) "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

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

(164) "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

(a)1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(165) "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, struc-

ture, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b)1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(166) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(167) "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(168) "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (96 LC₅₀) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(169) "NPDES" shall have the meaning given it in KRS 224.01-010.

(170) "NRCS" means the Natural Resources Conservation Service.

(171) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture in a manner that does not cause environmental harm.

(172) "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(173) "O&M" means operation and maintenance.

(174) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(175) "Operator" means:

- (a) Any person involved in the operation of a facility or activity;
- (b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or
- (c) For purposes of 401 KAR 5:090, any person who operates a facility.

(176) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(177) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(178) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(179) "Overflow" means:

- (a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(180) "Owner" means any person who possesses any interest in:

- (a) The right to develop, operate, or produce oil or gas; or
- (b) Any facility or activity.

(181) "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(182) "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(183) "pCi/l" means picocuries per liter.

(184) "PCR" means primary contact recreation.

(185) "Permit" means:

- (a) For purposes of 401 KAR 5:005 or 5:006, a document issued by the cabinet which authorizes the permittee to construct, modify, or operate a facility;

(b) For purposes of 401 KAR 5:009, a Swine Waste Management Permit; or

(c) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(186) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4: planning area maps; a discussion of the need for sewer service in the area; population projections; and an estimation of the twenty (20) year cost by category.

(187) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(188) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(189) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(190) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(191) "ppb" means parts per billion; assuming unit density, same as µg/l.

(192) "ppm" means parts per million; assuming unit density, same as mg/l.

(193) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(194) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or altera-

tion may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(195) "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(196) "Pretreatment standard" means a national pretreatment standard.

(197) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(198) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(199) "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(200) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(201) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(202) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(203) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(204) "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A which includes a priority ranking of applicants for the construction of wastewater treatment works under 33 USC 1313(e)(3)(H).

(205) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

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

(207) "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(208) "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(209) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(210) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(211) "Regional facility" means a facility designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area. This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(212) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Sections 201, 205, and 208 of the CWA to control point sources of pollution within a planning area.

(213) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 USC 1288 of the CWA and 40 CFR Part 130 to provide planning for the

treatment of wastewater and for controls and recommendations relating to wastewater for a particular area. Those existing agencies that have developed plans pursuant to Sections 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency for the area.

(214) "Regional sewage collection system" means a sewage collection system designated by a regional planning agency which is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(215) "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(216) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(217) "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(218) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(219) "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

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

(221) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(222) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(223) "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(224) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(225) "SCR" means secondary contact recreation.

(226) "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(227) "Secondary industry category" means any industry category which is not a primary industry category.

(228) "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(229) "Service area" means that geographic area currently being served by a regional facility.

(230) "Seven-Q-ten" or "7Q₁₀" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(231) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(232) "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(233) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(234) "Sewer line" means those devices used for collecting, trans-

porting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(235) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(236) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(237) "SIC" means standard industrial classification.

(238) "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(239) "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(240) "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(241) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(242) "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(243) "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(244) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(245) "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(246) "Small nonpublicly-owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(247) "Small WWTP" means:

(a) A WWTP with an average daily design capacity of less than 10,000 gpd; or

(b) For coal washing facilities, a WWTP which serves a portable coal processing facility.

(248) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(249) "SPCC" means spill prevention control and countermeasure.

(250) "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(251) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(252) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, in-

cluding those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one and zero-tenths (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(253) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(254) "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

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

(256) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(257) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(258) "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

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

(a) Confines 1,000 or more swine units at a given time; and

(b) Is not a concentrated animal feeding operation.

(260) "Swine units" means the units of measurement used to determine the applicability of 401 KAR 5:009. The number of units shall be determined using the formula in 401 KAR 5:009.

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

(262) "Swine waste lagoon" means a structure constructed pursu-

ant to 401 KAR 5:009 for the purpose of collecting, storing, and treating the waste from a swine feeding operation.

(263) "Swine Waste Management Permit" or "SWMP" means the permit issued pursuant to 401 KAR 5:009 that authorizes the construction or operation of one (1) or more swine waste lagoons and all related appurtenances and the implementation of a nutrient management plan at the swine feeding operation.

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

(265) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(266) "TDS" means total dissolved solids.

(267) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(268) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(269) "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(270) "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(271) "TSS" means total suspended solids.

(272) "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(273) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25) years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

(274) "Underground injection" means a well injection.

(275) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(276) "USC" means United States Code.

(277) "U.S. EPA" means the United States Environmental Protection Agency.

(278) "USGS" means the United States Geological Survey.

(279) "Variance" means:

(a) For purposes of 401 KAR 5:050 through 5:080, any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines; or

(b) For purposes of 401 KAR 5:009, a mechanism or provision that allows a modification or waiver of specified requirements.

(280) "WAH" means warm water aquatic habitat.

(281) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(282) "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(283) "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(284) "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with Sections 208 and 303(e) of the CWA and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with Sections 201, 205(j), 208, and 303(e) of the CWA and 40 CFR Part 130.

(285) "Water quality standard" means an administrative regulation

promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(286) "Well" or "water well" means:

(a) For purposes of 401 KAR 5:005, any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes, and industrial, irrigation, and dewatering purposes;

(b) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(c) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one (1) through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one (1) into which any water, gas, produced water, or other fluid is being injected.

(287) "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

(288) "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(289) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(290) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(291) "WWTP" means wastewater treatment plant.

(292) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(293) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(294) "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright law, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.:

(1) "40 CFR Part 116, "Designation of Hazardous Substances," July 1, 1997", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328;

(2) "40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," July 1997", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(3) "40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards," July 1997", U.S. Environmental Protection Agency, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

Section 3. Incorporation by Reference. (1) "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971;

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be subject to copyright law.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: August 6, 1998

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

PUBLIC HEARING: A public hearing to receive comments on this proposed new administrative regulation is scheduled for September 21, 1998, at 6:30 p.m. (Central time), in the Edward T. Breathitt Convention Center, Lake Barkley State Resort Park, 3500 State Park Road, Cadiz, Kentucky 42211. Individuals interested in attending the hearing shall notify Jack A. Wilson in writing at the address noted below by September 14, 1998, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends the hearing will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on September 21, 1998. Written comments will also be accepted at the public hearing. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet 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 Mr. Wilson at the address below before September 14, 1998 between 8 a.m. and 4:30 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation defines the terms used by regulations in 401 KAR Chapter 5. It is being promulgated to accompany the new proposed regulation for permits for swine feeding operations, 401 KAR 5:009, filed on the same date. The terms defined apply to all the programs in 401 KAR Chapter 5, including the Kentucky Pollutant Discharge Elimination System, permits for the construction and operation of wastewater facilities, oil and gas production, and the new proposed regulation for swine feeding operations. Any impact of these regulations on the entities affected occurs in the specific regulation where the term is actually used. This regulation is being promulgated to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings on the affected entities: There are no direct or indirect costs or savings on the affected entities due to the promulgation of this regulation; any direct or indirect costs or savings would occur in the regulation where the term is used. The direct and indirect costs or savings as a result of the regulation for the permitting of swine feeding operations are discussed in the Regulatory Impact Analysis for that regulation.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any ef-

fects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No specific comments were received during the public comment period.

2. Second and subsequent years: No specific comments were received during the public comment period.

(3) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms. Any impact would occur when the terms are used in a particular regulation.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed by the terms defined in this regulation.

(4) Assessment of anticipated effect on state and local revenues: No known or expected effects. Any effects would occur in the regulation where the term is used. The anticipated effect on state and local revenues for the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sources of revenue will be those funds appropriated to each program in 401 KAR Chapter 5.

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

(a) Geographical area in which administration regulation will be implemented: No specific comments were received during the public comment period.

(b) Kentucky: No specific comments were received during the public comment period.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of each regulation, but that would have required that terms be duplicated in each regulation in the chapter. That in turn would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each regulation would have to be amended. Therefore to save time and expenses of amending and printing each regulation, and so the public will know that all the definitions are in one location, the Division of Water is promulgating one regulation that will apply to all regulations in the chapter. As the regulations in the chapter are amended, the definitions in those regulations will be moved to this regulation.

(8) Assessment of expected benefits of the administrative regulation: None

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in a regulation. The effect on public health and environmental welfare of the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Any detrimental effect on environment and public health if the regulation were not implemented would occur in the program where the regulation would exist. The detrimental effect of not promulgating the regulation on the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known statute, regulation, or government policy is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

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

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering is not applicable to definitions. However, the individual regulation where the terms are used may be tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation for the definitions for swine feeding operations.
2. State compliance standards. This regulation contains the definitions of all terms for 401 KAR Chapter 5.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
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. Where applicable, this regulation has the same definitions as the definitions in the federal regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.
3. State the aspect or service of local government to which this administrative regulation relates. Portions of this regulation apply to city, county, or other municipal governments, including special districts, sanitation districts, etc. Those entities provide sanitation services to the populations served by the local government.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. None. Since this regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 5:009. Permits for swine feeding operations.

RELATES TO: KRS 224.10, 224.70, 224.73, 40 CFR Part 136
STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 CFR Part 136

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

Section 1. Applicability. The number of swine units used to determine the applicability of this administrative regulation shall be calculated according to the formula in subsection (4) of this section.

(1) This administrative regulation shall apply to the owner and operator of:

- (a) A new swine feeding operation;
- (b) An existing agricultural wastes handling system with less than

1,000 swine units, that increases the total number of swine units at the operation to 1,000 or more after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded operation from 1,000 swine units and above. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion; and

(c) An existing swine feeding operation with 1,000 or more swine units, that increases the number of swine units at the operation after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded swine feeding operation above previous swine unit levels. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion.

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

(a) The swine feeding operation was permitted before April 17, 1998, for the construction or operation of an agricultural wastes handling system pursuant to 401 KAR 5:005;

(b) The swine feeding operation submitted to the cabinet before April 17, 1998, either the Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, or the Site Survey Request, both required in 401 KAR 5:005, Section 2(1)(e) and before April 15, 2000, applies for and receives a KNDOP pursuant to 401 KAR 5:005; or

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

1. On April 17, 1998, it had an operating lagoon in place for the treatment of swine waste, otherwise conformed to the requirements of 401 KAR Chapter 5, and would have received a construction or operational permit for the swine feeding operation if it had applied for the permit;

2. On April 17, 1998, it was engaged in the current daily operation of a swine feeding operation; and

3. The owner and operator:

a. Before October 15, 1998, notifies the cabinet in writing that it intends to comply with 401 KAR 5:005. The notification shall include the number of swine units that are confined at the swine feeding operation; and

b. Before April 15, 2000, applies for and receives a KNDOP pursuant to 401 KAR 5:005. This provision shall not exempt the owner or operator of an unpermitted facility from complying with 401 KAR 5:005 before that date.

(3) After April 15, 1999, an existing agricultural wastes handling system or swine feeding operation may increase, under its current operating permit, the total number of swine units at the system or operation to 1,250 swine units if:

(a) The owner and operator has had an approved KNDOP pursuant to 401 KAR 5:005 for at least the previous twelve (12) months;

(b) The operation or system has had no violations during the last twelve (12) months;

(c) The owner and operator submits to the cabinet a request for permit modification pursuant to Section 2(8) of this administrative regulation; and

(d) Additional barns and lagoons are no closer to setback features than the existing barns and lagoons.

(4) The number of swine units shall be determined by the following formula. The worksheet "Worksheet for Calculating Swine Units", incorporated by reference in Section 19 of this administrative regulation, may be used to assist the owner or operator in calculating the number of swine units at the operation.

$$\text{Swine Units} = (0.1 \times N_n) + (0.4 \times N_f) + (0.45 \times N_b) + (3.55 \times N_{ff}) + (0.75 \times N_{ffe}) + (0.41 \times N_{fw}) + (0.35 \times N_{wf})$$

Where:

N_n = Number of nursery pigs;

N_f = Number of finishing pigs;

N_b = Number of boars;

N_{ff} = Number of sows, farrow to finish;

N_{ffe} = Number of sows, farrow to feeder;

N_{fw} = Number of sows, farrow to wean; and

N_{wf} = Number of pigs, wean to finish.

(5) If an applicant for a swine waste management permit operates or intends to operate a swine feeding operation under a contract with another entity that owns the swine, directs the manner in which the

swine will be housed, or controls the inputs or the other material aspects of the operation, the permit application shall bear the signatures of the owner and operator of the swine feeding operation and all other entities exercising control or ownership over any aspect of the operation. All signatories shall be jointly liable for complying with the permit.

Section 2. Swine Waste Management Permit. (1) No person shall construct, modify, or operate a swine feeding operation without having received a permit to do so from the cabinet. The permitted area shall include:

- (a) The area where the swine are confined;
- (b) The swine waste lagoon; and
- (c) The land application areas.

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

- (a) Beginning construction of a swine waste lagoon or its related appurtenances;
- (b) Beginning operation of a swine waste lagoon; or
- (c) Beginning land application of the swine waste.

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

(4) The owner and operator of a swine feeding operation shall apply for a permit pursuant to this administrative regulation before the operation commences construction, or for a permit renewal, ninety (90) days before the permit expires. The owner and operator shall not begin construction or operation at the planned site until he receives the permit from the cabinet.

(5) The SWMP shall be valid for five (5) years from the date of issuance.

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

(7) The owner and operator of the swine feeding operation shall submit to the cabinet a complete application for a SWMP. A complete application shall consist of two (2) copies of the following:

(a) A completed permit application form, "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application", incorporated by reference in Section 19 of this administrative regulation. The application shall include general facility information regarding its location, and owner and operator information;

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

(c) Documentation of public notification as required in Section 4(1) of this administrative regulation;

(d) A USGS seven and one-half (7 1/2) minute topographic quadrangle map with the swine feeding operation location clearly marked;

(e) A site map with a scale of no less than 1" = 660' including a north arrow and legend, clearly showing the swine waste lagoon location, roads, setback features in Section 5 of this administrative regulation and their setbacks, easements if applicable, locations of buildings on the site, field number and acres of land application areas, filter strips, and existing and proposed monitoring wells and lysimeters;

(f) A monitoring plan as required by Section 7 of this administrative regulation, designed to monitor the integrity of the swine waste lagoon;

(g) An operation-specific nutrient management plan as required by Section 9 of this administrative regulation;

(h) A certified copy of a legal deed, easement, or contract if required by Section 5 or 9 of this administrative regulation;

(i) A demonstration that the lagoon complies with the siting requirements of Section 5 of this administrative regulation; and

(j) The results of the baseline soil analyses required by Section 10 of this administrative regulation for each field that will receive the swine waste.

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

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

(8) Permit modification.

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

1. The swine waste lagoon design changes during construction or if an existing permitted swine waste lagoon is to be modified unless the repairs or changes are made pursuant to Section 8 of this administrative regulation;

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

3. There is a change in the permitted land application area that was not previously included in the permit application and approved by the cabinet.

(b) A complete application for modifying a SWMP shall consist of two (2) copies of:

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

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

3. The public notice required by Section 4(1) of this administrative regulation; and

4. For a new land application area:

a. The results of the baseline soil analyses required in Section 10 of this administrative regulation; and

b. The legal documents required by Section 5 or 9 of this administrative regulation.

(9) Permit renewal. For renewals of the SWMP, a complete application shall consist of two (2) copies of:

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

(b) The most recent five (5) years of the sampling and analytical data and the land application rates, as required by Section 11 of this administrative regulation, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted; and

(c) The public notice required by Section 4(1) of this administrative regulation.

(10) Permit transfer. The permit is not transferable to a person except after notice to the cabinet. The notice of transfer shall be submitted on the "Change in Ownership Certification for Swine Waste Management Permit", incorporated by reference in Section 19 of this administrative regulation. The cabinet may require modification or reissuance of the permit to change the name of the permittee and incorporate other requirements as required by KRS Chapter 224.

(11) Signatures. The permit application shall be signed and certified by the owner and operator of the swine feeding operation and persons who meet the criteria in Section 1(5) of this administrative regulation, according to the certification in Section 15 of this administrative regulation.

Section 3. Related Agricultural Wastes Handling Systems. (1) If two (2) or more agricultural wastes handling systems are related, the number of swine units used to determine the applicability of this administrative regulation shall be the sum of the swine units at all related facilities.

(2) Facilities are related if:

(a) They share common swine waste lagoons; or

(b) They share common land application areas.

Section 4. Public Notification Requirements. (1) Applicant notification.

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

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

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

- (b) The notification shall contain the following information:
1. Name and address of the owner and operator and physical location of the operation, if different than the mailing address;
 2. Number of swine that will be confined at the swine feeding operation; and
 3. Address where a person may submit comments on the application to the applicant.

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

(d) This notice shall be required for a permit renewal only if the operation has changed in size or has changed its land application areas.

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

(3) A person shall have up to thirty (30) days from the date of the publication of the cabinet's intended action to submit comments about the permit to the cabinet. A person who submits comments shall include the commentator's name and address. The cabinet shall notify each person who submitted comments to the cabinet on the draft permit of the cabinet's final action on the permit.

Section 5. Siting Requirements. (1) Siting restrictions.

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

1. A state or national park, state or national forest, or nature preserve; or
2. A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(b) The barn or lagoon shall not be located in:

1. A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;
2. A jurisdictional wetland as determined by the NRCS; or
3. A sinkhole or other enclosed depression where subsidence is evident.

(c) Swine waste shall not be land applied on:

1. Land with a slope greater than:
 - a. Twelve (12) percent if it does not have an established hay or pasture vegetative cover; or
 - b. Eighteen (18) percent if it does have an established hay or pasture vegetative cover; or
2. Land that has less than eighteen (18) inches of soil to bedrock.

(d) A swine waste lagoon shall be located so that there is at least:

1. Three (3) feet of soil between the bottom of the lagoon liner and bedrock. This distance may be reduced with the use of an approved synthetic liner; and
2. Five (5) feet separation distance between the bottom of the lagoon liner and the zone of saturation. This distance may be reduced with the use of an approved synthetic liner.

(2) Setbacks.

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

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

(c) Minimum distance. Distance shall be the shortest distance measured from the nearest edge of the barn, lagoon, or land application area to the nearest edge of the setback feature. An existing setback feature shall be existing as of the date that the applicant notifies the public pursuant to Section 4(1) of this administrative regulation.

Existing Setback Feature	Barn and Lagoon	Land Application Area Land Application method	
		Injection	Other Method
Dwelling not owned by applicant, church, school and school yard, business, other structure	1,500 feet	500 feet	1,000 feet

to which the general public has access, park			
Incorporated city limit	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant	300 feet	150 feet	150 feet
Property line	750 feet	50 feet	500 feet
Downstream* water listed in 401 KAR 5:030 as other than use protected, outstanding resource waterll	1 mile	750 feet	1,500 feet
Downstream* public water supply surface water intake	5 miles	1 mile	1 mile
*Measured along gradient			
**Designated outstanding resource waters are listed in 401 KAR 5:026			

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

Section 6. Requirements for a Swine Waste Lagoon. Each swine feeding operation shall have at least one (1) anaerobic or aerobic lagoon, sized in accordance with this administrative regulation. No swine feeding operation shall have as its only means of treatment a holding pond or deep pit.

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

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

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

1. At least one (1) year's production of residual solids;
2. The minimum design volume for an anaerobic lagoon;
3. At least 180 days of swine waste production;
4. Twelve (12) inches of excess precipitation; and
5. Precipitation from one (1) twenty-five (25) year, twenty-four (24) hour rainfall event;

(c) The swine waste lagoon shall have an emergency spillway above the maximum design volume, with one (1) foot of freeboard above the spillway. The spillway shall have a slope with a vertical to horizontal ratio of no steeper than one to three (1:3) and shall be:

1. Designed to carry the flow from one (1) 100-year, twenty-four (24) hour storm event; and
2. At least ten (10) feet wide at the crest;

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

1. The maximum design volume;
2. The minimum design volume for an anaerobic lagoon; and
3. The crest of the spillway.

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

(f) Each swine waste lagoon shall have either:

1. A compacted soil liner constructed so that:
 - a. The lagoon has a hydraulic gradient of no greater than eight and zero-tenths (8.0);
 - b. The liner has a maximum permeability of 1×10^{-7} cm/sec; and
 - c. (i) The soil is deposited and compacted in place in at least two (2) six (6) inch lifts; or
 - (ii) There is naturally occurring soil in the finished lagoon excavation, compacted in place and with one (1) six (6) inch lift; or
2. A synthetic liner that provides at least equivalent protection;

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

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

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

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

(k) The berm shall have a vegetative cover.

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

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

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

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

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

(a) After construction of the lagoon and before beginning lagoon operation, the as-built construction of the lagoon shall be certified by a professional engineer or the NRCS as meeting the requirements of subsection (1) of this section and shall be submitted to the cabinet pursuant to Section 15 of this administrative regulation;

(b) 1. Before introducing swine waste into an anaerobic lagoon, the lagoon shall be filled with water to at least one-half (1/2) of the minimum design volume; and

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

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

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

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

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

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

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

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

(c) The owner and operator shall stabilize the site by using standard erosion control practices, unless the cabinet approves an alternative closure that complies with the environmental standards in Section 12 of this administrative regulation.

Section 7. Swine Waste Lagoon Performance Monitoring. The applicant shall develop a swine waste lagoon liner performance monitoring plan for detection of problems with the swine waste lagoon liner and to provide the opportunity to repair problems with the swine waste lagoon liner before a chronic failure of the lagoon develops or groundwater contamination occurs. The monitoring plan shall address the following items.

(1) The permittee shall conduct groundwater monitoring to measure the performance of the lagoon liner for each lagoon. Except as provided in paragraphs (c) and (d) of this subsection, swine waste lagoon performance monitoring shall be conducted by monitoring the zone of saturation using monitoring wells. If the zone of saturation occurs at a depth of greater than twenty (20) feet below the bottom of the swine waste lagoon, or if bedrock is encountered below the bottom of the swine waste lagoon liner at a depth shallower than the zone of saturation, the owner or operator may monitor the vadose zone using

lysimeters, instead of monitoring the zone of saturation. If the owner or operator monitors the vadose zone, the owner or operator shall follow the procedures in paragraph (b) of this subsection.

(a) Zone of saturation monitoring requirements. Zone of saturation monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient monitoring wells shall be constructed for each swine waste lagoon.

1. Location of monitoring wells.

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

b. Each down-gradient monitoring well shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location that maximizes the ability of the monitoring well to detect a lagoon liner failure.

2. Monitoring well construction requirements. A monitoring well shall be constructed in accordance with 401 KAR 6:310 and shall:

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

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

c. Prevent unauthorized access to the monitoring well;

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

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

(b) Vadose zone monitoring requirements. Vadose zone monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient lysimeters shall be installed for each swine waste lagoon.

1. Location of lysimeters.

a. Each up-gradient lysimeter shall be constructed as close as possible to the lagoon in an area that is not hydrologically affected by the lagoon, land application activities, and animal feeding and storage activities that may contribute monitored constituents to the up-gradient lysimeter.

b. Each down-gradient lysimeter shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location and depth that maximizes the ability of the lysimeter to detect a lagoon liner failure.

2. Lysimeter construction. If lysimeters are to be used to monitor the vadose zone, the lysimeters shall be constructed to:

a. Prevent surface contaminants from entering groundwater by way of the lysimeter;

b. Prevent unauthorized access to the lysimeter;

c. Be protected from damage occurring from normal activities at the swine feeding operation; and

d. Be at a total depth of no greater than twenty (20) feet.

(c) If conditions at the site are such that zone of saturation or vadose zone monitoring would not reflect a contribution from the swine waste lagoon, the applicant shall submit an alternative monitoring plan to demonstrate the performance of the lagoon liner.

(d) The cabinet may require additional monitoring, based on geological considerations and the lagoon size, shape, and structure, to reasonably ensure that a leak from the liner will be detected.

(2) Analysis parameters. The permittee shall analyze each monitoring sample for the following parameters: chlorides, nitrate nitrogen, total phosphorus, and fecal coliform. However, if lysimeters are used to monitor the vadose zone, fecal coliform shall not be sampled and analyzed.

(3) Monitoring well and lysimeter sampling.

(a) Each monitoring sample shall be collected and analyzed according to the procedures in Section 11 of this administrative regulation.

(b) Each monitoring well shall be purged three (3) to five (5) well volumes prior to sampling. Purging is not required for a lysimeter.

(c) Each monitoring well and lysimeter shall be sampled quarterly after beginning lagoon operation. Samples from each monitoring well and lysimeter shall be analyzed for the parameters listed in subsection (2) of this section.

(4) Reporting and recordkeeping. Monitoring sample results shall be recorded on the form "Groundwater Sample Analysis for Swine Feeding Operations", incorporated by reference in Section 19 of this

administrative regulation and shall be submitted to the cabinet according to the procedures in Section 11 of this administrative regulation.

Section 8. Lagoon Liner Failure Response. (1) If a down-gradient monitoring sample analysis result exceeds three (3) times the value of the up-gradient monitoring sample analytical result and for nitrate nitrogen exceeds ten (10) mg/l or for chlorides exceeds 250 mg/l, then the permittee shall notify the cabinet immediately by calling 1-800-928-2380. The permittee shall also develop a plan to repair the swine waste lagoon or to determine the source of contamination.

(2) The permittee shall submit the plan to the cabinet for review and approval within forty-five (45) days of receiving the sampling results that exceed the value in subsection (1) of this section. The plan shall include a timetable for investigating the cause of the exceedances and all lagoon liner performance monitoring data required by this administrative regulation. The plan may include additional monitoring to demonstrate that the lagoon liner is performing as designed. If the lagoon liner is not performing as designed, the plan shall specify the methods for repairing the lagoon liner.

(3) The cabinet shall review the plan and the permittee shall make changes in the plan to conform with the cabinet's comments in accordance with this administrative regulation.

(4) If the cabinet approves a plan to repair the lagoon, the repairs to the liner or other corrections identified in the approved plan shall be completed no later than 120 days after the cabinet's approval of the plan or when requested by the cabinet if the failure is imminent.

(5) Groundwater contamination that occurs as a result of a discharge from the lagoon shall be addressed and corrected so that groundwater contaminant levels do not exceed ten (10) mg/l for nitrate nitrogen or 250 mg/l for chlorides, or ambient background groundwater quality conditions at the property line of the swine feeding operation.

(6) Before restarting lagoon operation, the permittee shall have a professional engineer or the NRCS certify that the repairs have been made in accordance with the approved plan and shall notify the cabinet that the repairs have been made and so certified.

(7) After restarting the lagoon operation following the procedures specified in Section 6 of this administrative regulation or following the procedures in the approved plan, the permittee shall return to the original sampling frequency required in Section 7 of this administrative regulation or the frequency specified in the approved plan.

Section 9. Land Application. (1) The permittee shall dispose of the swine waste in the swine waste lagoon by land application, unless an alternative practice is approved by the cabinet pursuant to Section 13 of this administrative regulation. The permittee shall apply waste only on areas that are included in the SWMP.

(2) Nutrient management plan.

(a) Each swine feeding operation shall develop a nutrient management plan that describes how the swine waste generated by the swine feeding operation will be used for the benefit of the surrounding land, and how and where the swine waste will be land applied.

(b) The nutrient management plan shall contain the following information:

1. The proposed swine waste land application rate per acre, based on crop nitrogen requirements, method of application, expected quantity of nitrogen in the swine waste, residual nitrogen from previous waste application, and other sources of nitrogen applied as fertilizer;

2. Total number of acres needed for land application including the:

a. Number of acres needed to land apply the swine waste based on the land application rate per acre in subparagraph 1 of this paragraph; and

b. Number of acres needed to comply with the siting restrictions for land application in Section 5 of this administrative regulation;

3. A demonstration that the applicant has adequate land available to comply with the land application requirements of subparagraph 2 of this paragraph. The demonstration shall consist of a certified copy, duly filed of record, of at least one (1) of the following that demonstrate legal right to apply waste to the proposed land application area or legal right to the variance on the setback allowed by Section 5 of this administrative regulation:

a. The deed to the property;

b. The lease for the property of at least five (5) years' duration, evidencing the right to use another's property for land application; or

c. An easement evidencing the right to use another's property for

land application or legal right to the variance in the setback allowed by Section 5 of this administrative regulation; and

4. A swine waste lagoon management plan that describes:

- a. The frequency of the supernatant removal;
- b. The frequency of residual solids removal;
- c. The type of equipment that will be used for land application; and
- d. The odor control practices;

(c) The nutrient management plan shall be submitted with the permit application for the cabinet's approval. It shall be reviewed and updated as necessary and be maintained on-site. The cabinet shall review the initial plan and the applicant shall make changes to conform with the cabinet's comments, in accordance with this administrative regulation.

(3) Land application management.

(a) For every land application event, the permittee shall sample the swine waste to be applied. The sample shall be collected and analyzed for the parameters listed in Section 10(2) of this administrative regulation.

(b) Supernatant and residual solids shall be land applied using irrigation, surface spreading, or injection techniques. Residual solids shall be incorporated into the soil within twenty-four (24) hours of land application or shall be injected.

(c) Swine waste shall not be land applied:

1. On frozen or saturated soil or during a precipitation event;
2. In excess of the amount needed to provide the nitrogen requirement of the crop being grown; or
3. On crops grown for direct human consumption.

(d) Swine waste shall not reach waters of the Commonwealth by runoff, drift, manmade conveyances, direct application, or direct discharge.

(e) The document "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (ACRE), Code 393, NRCS-KY-April 1997", incorporated by reference in Section 19 of this administrative regulation, shall be used to determine if a filter strip is required for a field that receives swine waste. If a filter strip is required, it shall be designed, installed, and maintained according to that document. This strip may be included as a part of the setback area.

Section 10. Swine Waste Lagoon and Land Application Sampling Analysis and Record Keeping. The applicant shall conduct background and annual land application performance soil analysis and annual swine waste lagoon analysis specified in this section and maintain records of those analysis results according to the procedures specified in this section and Section 11 of this administrative regulation.

(1) Soil sample analysis.

(a) Background sample analysis. Before the submittal of a permit application or permit modification and to establish the background conditions of the soil, the applicant shall conduct a baseline soil sample analysis for each field. The applicant shall analyze each soil sample for available phosphorus, available potassium, pH, and CEC.

(b) Annual sample analysis. The permittee shall perform an annual soil analysis on a composite sample from each field that will receive swine waste that year. The permittee shall analyze each soil sample for available phosphorus, available potassium, soil pH, and buffer pH.

(2) Swine waste analyses. The contents of the swine waste lagoon shall be analyzed for every land application event for the following parameters:

- (a) Total kjeldahl nitrogen, nitrate nitrogen, and ammonia nitrogen;
- (b) Total phosphorus;
- (c) Total potassium;
- (d) pH;
- (e) Chloride; and
- (f) Total solids.

(3) Each swine feeding operation shall maintain records of all swine waste that is land applied. The records shall be entered on the form "Swine Waste Land Application Log", incorporated by reference in Section 19 of this administrative regulation. Copies of the records shall be submitted with the permit renewal application. The records shall contain the following information:

- (a) Soil and waste analytical results required in subsections (1) and (2) of this section; and
- (b) For each land application event:
 1. Field number and acreage;
 2. Date applied;

3. Crop;
4. Quantity applied;
5. Method of application;
6. Type of swine waste applied; and
7. Percent of total solids of swine waste applied.

Section 11. General Monitoring, Analysis, and Reporting Requirements. (1) Reports.

(a) Groundwater monitoring, soil sampling, and swine waste analytical results shall be maintained by the swine feeding operation on-site. The forms "Groundwater Sample Analysis for Swine Feeding Operations" and "Swine Waste Land Application Log", incorporated by reference in Section 19 of this administrative regulation, shall be used to record the data.

(b) A minimum of five (5) years of data shall be maintained, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be made available to the cabinet upon request.

(c) Copies of the analytical and monitoring data for the most recent five (5) years shall be submitted to the cabinet with an application to renew or modify the permit, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted.

(2) Monitoring, analysis, and records.

(a) Sampling shall be conducted and the analysis shall be performed according to the procedures in 40 CFR Part 136, "Guidelines: Establishing Test Procedures for the Analysis of Pollutants", adopted without change in Section 18 of this administrative regulation, unless other procedures have been specified in the permit.

(b) Samples and measurements shall be representative of the monitored activity.

(c) Monitoring records shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The laboratories that performed the analyses;
5. The analytical techniques or methods used; and
6. The results of the analyses.

(d) A person who falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99.

Section 12. General Environmental Conditions. (1) No permit shall be issued to a swine feeding operation authorizing a direct discharge into the waters of the Commonwealth except a discharge caused by a rainfall event exceeding a twenty-five (25) year, twenty-four (24) hour rainfall event.

(2) The applicant shall demonstrate to the cabinet that the swine feeding operation will:

(a) Protect those minimum conditions found in 401 KAR 5:031 applicable to all waters of the Commonwealth;

(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 to be of a lesser quality than the criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030;

(c) Be in accordance with any of the general or particular swine feeding operation requirements mandated by this administrative regulation;

(d) Not create an environmental or a public health hazard;

(e) Not result in the contamination of public or private drinking water source or supply;

(f) Not result in the destruction of endangered or threatened species or contribute to the taking of a federally endangered or threatened species of fish or wildlife; and

(g) Conform to other handling, treatment, and management and removal requirements deemed necessary by the cabinet to implement this administrative regulation and protect the waters of the Commonwealth.

(3) Dead animals shall be disposed of in accordance with KRS 257.160 and Chapter 263.

Section 13. Variance for Experimental or Alternative Practices. A swine feeding operation may obtain a variance from Sections 5, 6, 7,

and 9 of this administrative regulation with the use of an experimental or alternative practice or technology that deviates from the requirements of this administrative regulation. The variance shall be submitted as a new permit, permit modification, or permit renewal.

(1) The applicant shall submit a request for the variance explaining the alternative or experimental practice or technology and documenting how the practice will be implemented.

(2) The cabinet may request additional technical information. The cabinet will review the alternative or experimental practice or technology and may request additional review from the most appropriate technical agency to determine if the practice or technology is appropriate.

(3) The variance may be granted if the applicant demonstrates the practice or technology will comply with the requirements of Section 12 of this administrative regulation, will not pollute the waters of the Commonwealth, will not result in additional problems with odors from the operation, and will not cause additional health or environmental problems.

(4) If the alternative or experimental practice or technology fails to provide adequate environmental protection, the cabinet may revoke the variance and require the owner or operator to comply with the provisions of this administrative regulation.

Section 14. Compliance. If the swine feeding operation is not in compliance with the requirements of this administrative regulation or the conditions of its permit, the cabinet may:

(1) Revoke or modify the permit;

(2) Initiate enforcement action;

(3) Issue a notice of intent to deny a new permit;

(4) Issue a new permit under Section 2 of this administrative regulation with appropriate conditions; or

(5) Take other actions authorized by KRS Chapter 224 and the administrative regulations in 401 KAR Chapter 5.

Section 15. Standard Permit Conditions. The following conditions shall apply to all permits for swine feeding operations:

(1) Duty to comply. The permittee shall comply with all conditions of the permit. A permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation, permit modification, or denial of a permit renewal application. A person who violates a permit condition as set forth in this administrative regulation is subject to penalties under KRS 224.99.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required by Section 2 of this administrative regulation.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The structural stability of a unit or part of the permitted swine feeding operation is the sole responsibility of the permittee. The failure of a structural unit or part of the swine feeding operation shall not relieve the permittee of the responsibility of complying with each term and condition of the permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent a discharge in violation of the permit.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances that are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The filing of a request by the permittee for a permit modification, renewal, or reissuance or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. The permit does not convey a property right of any kind, or an exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, reissuing, or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by the permit.

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and

other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated swine feeding operation is located or conducted, or where records pertinent to the permit are or may be kept;

(b) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(c) Inspect at reasonable times a swine feeding operation including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring compliance with this administrative regulation or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) After construction of the swine waste lagoon is completed and before beginning lagoon operation, the permittee shall submit to the cabinet the as-built certification required by Section 6 of this administrative regulation. The cabinet shall notify the permittee within ten (10) days of receipt of the certification of any problems associated with the certification or the construction of the lagoon.

(11) Signatures. Each application, report, or other information submitted to the cabinet shall be signed and certified by the owner and operator of the swine feeding operation and persons who meet the criteria in Section 1(5) of this administrative regulation. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this administrative regulation, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99.

Section 16. Compliance Reporting Requirements. (1) Planned changes. The permittee shall give notice to the cabinet as soon as possible of a planned physical alteration or addition to the permitted swine feeding operation.

(2) Anticipated noncompliance. The permittee shall give advance notice to the appropriate regional office and the Division of Water's Central Office in Frankfort of a planned change in the permitted swine feeding operation which may result in noncompliance with permit requirements.

(3) Lagoon discharge reporting. If there is a direct discharge from the lagoon, a direct discharge during land application to the waters of the Commonwealth, or a discharge through the spillway or over the berm, the permittee shall immediately notify the cabinet at 1-800-928-2380. The permittee shall provide the following information in the notification:

(a) A description and cause of the discharge, including a description of the flow path to the receiving water body;

(b) An estimate of the flow rate and volume discharged;

(c) The period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and

(d) Steps taken to reduce, eliminate, and prevent recurrence of the discharge.

(4) Noncompliance endangering human health and environment. The permittee shall orally report any noncompliance which may endanger human health or the environment, immediately when the permittee becomes aware of the circumstances by calling 1-800-928-2380. This report shall be in addition to and not in lieu of another reporting requirement applicable to the noncompliance. A written submission shall also be provided within seven (7) days of when the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(5) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsection (4) of this section, with the next permit application.

Section 17. Permit Timetables. This section shall apply to permits issued pursuant to this administrative regulation.

(1) Within thirty (30) calendar days of initial receipt of an application

for a SWMP the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that every aspect of the application is technically sufficient or approvable.

(2) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct identified deficiencies within the time frame, the cabinet may return the application.

(3) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon in writing by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit.

(4) The cabinet shall issue its final decision on a complete permit application within ninety (90) calendar days after receipt of an administratively complete permit application. A complete permit application shall contain all the administrative and technical information required by this administrative regulation.

(5) Timetable exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on a SWMP application shall include:

(a) Time waiting for the applicant to respond to a notice of deficiency;

(b) Time during which an opportunity for public comment period on a draft permit is given; and

(c) Other times as agreed to in writing by the applicant and the cabinet.

Section 18. Federal Regulation Adopted Without Change. The following federal regulation is adopted without change: "40 CFR Part 136, 'Guidelines Establishing Test Procedures for the Analysis of Pollutants', as in effect July 1, 1997". The subject matter of this administrative regulation relating to testing methods is governed by that federal regulation.

(1) The federal regulation may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(2) The federal regulation is available for inspection and copying, subject to the copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP 7033-SFO (7/98)", Kentucky Division of Water;

(b) "Change in Ownership Certification for Swine Waste Management Permit, DEP 7033-CO (7/98)", Kentucky Division of Water;

(c) "Swine Waste Land Application Log, DEP 7033-LOG (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(d) "Groundwater Sample Analysis for Swine Feeding Operations, DEP 7033-GW (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(e) "Worksheet for Calculating Swine Units, DEP 7033-W (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water; and

(f) "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (Acre), Code 393, NRCS-KY-April 1997".

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be subject to copyright law. The document in subsection (1)(f) of this section may be inspected or copied at the Kentucky Division of Water, or may also be

obtained from the NRCS, 771 Corporate Drive, Suite 110, Lexington, Kentucky 40503, 606/224-7350.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: August 6, 1998

FILED WITH LRC: August 7, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed new administrative regulation is scheduled for September 21, 1998, at 6:30 p.m. (central time), in the Edward T. Breathitt Convention Center, Lake Barkley State Resort Park, 3500 State Park Road, Cadiz, Kentucky 42211. Individuals interested in attending the hearing shall notify Jack A. Wilson in writing at the address noted below by September 14, 1998, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends the hearing will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on September 21, 1998. Written comments will also be accepted at the public hearing. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet 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 Mr. Wilson at the address below before September 14, 1998 between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, 502/564-3410 (Voice), 502/564-0111 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation applies to a new swine feeding operation. A swine feeding operation is an operation that confines 1,000 swine units or more and is not a concentrated animal feeding operation. This administrative regulation does not apply to existing agricultural wastes handling systems, which will be allowed to continue under the Kentucky No Discharge Operational Permit (KNDOP) program pursuant to 401 KAR 5:005, as long as they do not expand their operation. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. For existing operations not invoking this expansion provision, expansions up to or beyond 1,000 swine units will require the operations to be in compliance with this administrative regulation. In all cases, when an operation expands beyond the applicable threshold, only the expanded portion will be subject to this administrative regulation. This administrative regulation does not apply to an existing swine feeding operation that obtained a permit under the KNDOP program, or had applied for the permit before April 17, 1998, unless the swine feeding operation increases the number of swine units after April 17, 1998. This administrative regulation applies to an existing swine feeding operation that confines 1,000 or more swine units and that failed to obtain a permit under the KNDOP program and failed to apply for the permit before the effective date of this administrative regulation, unless it notified the Cabinet in writing by October 15, 1998, that it wished to be governed under the KNDOP program. In this instance, the swine feeding operation must apply for and receive a permit under the KNDOP program by April 15, 2000. Once permitted, changes to the swine feeding operation would be regulated as if the facility had obtained a permit under the KNDOP program or had applied for the permit before the effective date of this administrative regulation. The

number of new swine feeding operations seeking to locate in Kentucky is unknown. However, some large integrator swine feeding operations have expressed an interest in obtaining a permit to locate in Kentucky. If large integrator swine feeding operations locate in Kentucky and obtain permits, they will require contract growers. This administrative regulation requires integrators to be jointly liable, along with their contract growers, for permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate. This provision also eases the regulatory burden on the contract growers, since liability will be shared with the integrators. Large integrators confine a large number of sows for breeding purposes at a central swine feeding operation ("farrowing"). The sows give birth to an average of 2.3 litters per year with approximately 10 piglets born with each litter. The piglets are often housed at swine nursery facilities until they reach a certain weight (approximately 55 pounds) at which time they are transferred to a "finishing" swine feeding operation where they are raised to market weight. Swine finishing operations are commonly "contract growers" for the large integrators. Nursery facilities may also work under contract with large integrators. With integrators locating in Kentucky, the need for contract growers will likely be addressed to some extent by the expansion of some existing operations permitted under the KNDOP program; however, some new swine feeding operations will likely be established. The cabinet can only estimate the number of existing agricultural wastes handling systems currently permitted under the KNDOP program seeking to expand up to or beyond the 1,000 swine unit threshold. The cabinet estimates there are fewer than 150 agricultural wastes handling systems that are near or above the 1,000 swine unit threshold, or 6% of the total number of swine operations in Kentucky. This estimate is based on the cabinet's KNDOP program database and a survey conducted by researchers at the University of Kentucky's Department of Agricultural Economics. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity may lower the number of potentially affected entities to less than the 150 systems stated above. Note, however, that future expansions of these operations beyond the 1,250 swine unit threshold would require the expanded portion of the operations to comply with this administrative regulation. Researchers at the University of Kentucky's Department of Agricultural Economics indicate the number of swine produced has generally declined in Kentucky since 1982; however, eleven counties in the central portion of the state have seen a 25% increase in the number of hogs produced during this period. Over the same period, there has been a 45% decrease in the number of farms producing hogs in these counties. This suggests that swine production facilities have become larger in terms of the number of swine produced at any given site. If this trend continues, the number of affected entities will continue to rise over time, though the total number of swine-producing operations may actually decrease. The cabinet tracks existing permit-holders based on the number of head of swine at each permitted operation. The cabinet presently permits 143 agricultural wastes handling systems with 1,000 or more head of swine, all of which are located in the western part of the state (west of Interstate 75). The top four largest swine operations are in Nelson (16,400 swine), Graves (12,000 swine), Allen (11,200 swine), and Butler (11,020 swine) counties, respectively. Most permitted agricultural wastes handling systems with 1,000 or more swine are west of Interstate 65. The cabinet can only estimate the number of existing agricultural wastes handling systems expected to choose to become regulated under the less stringent requirements of 401 KAR 5:005. According to Kentucky Agricultural Statistics 1996-97 there are approximately 2,500 swine operations in Kentucky. The KNDOP program currently lists 394 permittees. Using these estimates, there are roughly 2,106 unpermitted swine operations within the Commonwealth, though not all of these operations require a permit under this administrative regulation.

(2) Direct and indirect costs or savings on the affected entities: This administrative regulation will require affected entities to comply with siting, permitting, design, operation, and public notification requirements. All affected entities will be required to have under their control land of suitable acreage to allow for the required setbacks and the

proper disposition of swine waste. These costs could be significant depending on the size and location of the operation. This administrative regulation includes siting restrictions for swine feeding operations in wellhead protection areas, jurisdictional wetlands, and 100-year floodplains. Land application of swine waste is prohibited in areas with slopes steeper than 12% or those areas with permanent vegetative cover having slopes greater than 18%. Land application is also prohibited in areas with less than 18 inches of soil to bedrock and on areas where crops for direct human consumption are grown. Land application of swine waste is not to exceed the agronomic capacity of the receiving fields. In some instances of existing operations seeking to expand, the land may be unsuitable, or unavailable, for the increased waste to be applied, thus necessitating a greater amount of acreage for land application. Furthermore, setback requirements constrain the acreage of available land for swine waste application. These factors will limit availability of suitable land for swine waste application. With this regulation in effect, certain areas may experience upward pressure on property values (and taxes) if demand for suitable sites increases. Land acquisition costs would increase accordingly. It should be noted, however, that the acreage required for land application of swine waste can be much less if the operator opts to inject the waste directly into the soil, as opposed to spraying or other methods, due to shorter setback requirements. As this technology becomes more widely available and less costly, this may become an option for more and more operators. Land acquisition costs will vary depending on the amount of land already under control of the affected entity, the setbacks applicable to the site, and the agronomic characteristics of the land application areas. Farm property values average \$1,077 per acre (1992 Census of Agriculture). This administrative regulation may require the purchase of additional land to meet all setback and siting requirements. However, these costs could be reduced or nonexistent, depending on the amount of land under the operator's control. Costs can also be minimized through a negotiated lease or other agreement between the owner or operator of the swine feeding operation and the owner of acreage suitable for land application of the swine waste. Furthermore, these costs can be offset through income generated by the sale of row crops grown on the land application areas, or through renting the land to farmers of row crops. Considering the extent of environmentally sensitive areas and other restricted sites, the installation of swine feeding operations in many areas of Kentucky will be prohibited, possibly creating a premium for those lands that are suitable. If large integrator swine feeding operations do not locate in Kentucky, there could be less demand for associated agricultural operations such as grain suppliers and contract growers. However, it is unclear whether the installation of large integrator swine feeding operations in Kentucky will cause a positive or negative net economic impact on small-scale swine operators. Anecdotal evidence from Oklahoma indicates large integrators tend to drive up demand for land application acreage to the point that small-scale swine operators cannot purchase land needed for expansion of their operations. Researchers from the University of Kentucky's Department of Agricultural Economics indicate the community and regional economic impacts associated with large integrator swine feeding operations could be significant if these integrators acquire building materials, feed, labor, and other production inputs from the local economy. However, there is anecdotal evidence from the Corn-Belt region indicating large integrators tend to contract building materials, feed, and veterinary services out to larger companies not necessarily located in the community where the feeding operations reside. Chism and Levins (1994) found that for livestock-intensive operations, the percent spent locally declined dramatically with the size of the operation. If so, then the economic benefit to the host community from large integrators would be diminished. Data are insufficient to conclude the economic impacts large swine feeding operations will have on communities. However, even if all construction, feeding and veterinary services are obtained from outside the host community, there will be expenditures. Hence, if large integrator swine feeding operations do not locate in Kentucky, this will have the negative effect of these foregone expenditures in host communities although the scale of this impact is difficult to predict. Compliance standards will require a swine feeding operation to conduct lagoon liner performance testing to adequately determine the integrity of waste lagoons. Lagoon liner performance testing for the first year will require four samples at three points (one up-gradient and two down-gradient of the lagoon(s)). Installation of three wells for lagoon liner performance testing will cost an estimated \$1,200 to \$9,000. Tests

conducted for the prescribed parameters will cost an estimated \$67 to \$200 per well per sampling event, including labor costs. With these estimates, lagoon liner performance testing costs, including well installation, are estimated at between \$2,000 and \$11,400 for the first year. These costs could be less if the site is suitable for the use of lysimeters, instead of wells, for groundwater monitoring. Installation of three lysimeters is estimated to cost \$1,500. Expanding swine feeding operations may be required to modify their existing lagoon if the lagoon fails to conform to the requirements of this administrative regulation. The liner requirements and depth to bedrock requirements for lagoons, along with the setbacks required, may preclude expansion of existing operations in certain circumstances, depending on land availability. Liners must have a minimum of 12 inches of compacted soil, constructed with two 6-inch lifts, or a synthetic liner to meet permeability standards. Liner costs will vary depending on the availability of suitable soils near the lagoon. Estimates for a clay liner for a 5-acre lagoon range from \$20,000-\$30,000 and twice this figure for a synthetic liner. This regulation allows naturally-occurring soil in the finished excavation to be compacted in place for the first 6-inch layer, as long as permeability and hydraulic gradient requirements are met. This may reduce costs of a clay liner. Permeability tests for the liner cost an estimated \$75. For the second and subsequent years, swine feeding operations affected by this regulation will be required to incur a minimal cost (approximately \$800 to \$2,400 total per year) to test for lagoon liner leaks at three (3) detection points four times per year. If leaks are detected, the permittee must develop a plan for repair or further monitoring. The swine feeding operation may perform additional monitoring to verify that the liner is performing as designed and potentially avoid liner replacement costs for properly performing lagoons. Testing costs will be dependent on the extent of lagoon leakage. A swine feeding operation is also required to develop and implement a nutrient management plan to ensure proper disposition of lagoon waste. Currently a nutrient management plan is a standard part of any large-scale agricultural operation. This requirement is not expected to create significant new costs for the affected entities. Baseline and annual soil testing, as part of the overall nutrient management plan, will be required at each field targeted to receive swine waste. Cost for the affected entities are estimated at \$50 per year per field. Total costs will vary depending on the number of fields to be sampled. Swine waste testing is required prior to each land application event. If a swine feeding operation applies waste 5 times in a year, the testing costs would total an estimated \$50 per event, or \$250 for the year. Costs of compliance will vary dramatically depending on several factors. These include the existing infrastructure at the operation and the amount of land under the operator's control. The cabinet has prepared the following general breakdown of new costs to the affected entities.

First Year:

Suitability assessment of lagoon site	\$5,000
Permit application preparation and development of nutrient management plan *	\$4,000
Lagoon construction with compacted soil liner	\$25,000
If synthetic liner is required, add	\$25,000
Lagoon liner permeability test	\$75
Groundwater monitoring well installation	\$5,100
If lysimeters are appropriate, the cost is lowered to	\$1,500
Quarterly groundwater monitoring	\$1,600
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50

Second and Subsequent Years:

Quarterly groundwater monitoring	\$1,600
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50

*Could be less if conducted by the NRCS.

Additional land may be necessary to meet setbacks and siting requirements. Costs are dependent on the amount of land under the control of the swine feeding operation, the cropping system employed on the land application areas, and whether the land is leased or purchased.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cabinet can only estimate the extent to which this regulation will impact the cost of living and employment for new swine feeding operations. It is unclear whether this administrative regulation will deter the installation of large

swine feeding operations. Operations of this size (an estimated \$2 million - \$5 million investment) are believed to factor in the costs of environmental compliance into their operations. Furthermore, the limited studies that have been conducted regarding this issue provide mixed reviews as to whether the installation of large swine feeding operations would produce an overall positive or negative effect on the cost of living and employment. Because this regulation does not apply to existing swine feeding operations operating under their current permit, there are no foreseen impacts on the cost of living or employment levels for existing swine feeding operations. All affected entities will incur costs to come into compliance with this regulation. This cost could have an effect on the employment levels of these operations. Employment levels, however, are dependent on many factors including market demand for swine, and the management practices of the affected entities.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cabinet can only estimate the extent to which this regulation will impact the cost of doing business. This regulation does not apply to agricultural wastes handling systems operating under their currently permitted capacity. Therefore, there are no foreseen impacts on the cost of doing business for existing agricultural wastes handling systems, unless they increase up to or beyond the 1,000 swine unit threshold. Furthermore, these operations will be allowed to take advantage of the expansion opportunity provided for in this administrative regulation and, thus stay under the existing regulatory program in 401 KAR 5:005.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: Reporting and paperwork will be greater for the affected entities under the new SWMP program, compared to the existing KNDOP program. Increased reporting and paperwork result from the requirements for site suitability assessments, monitoring well installation, soil testing, lagoon liner performance testing, lagoon waste testing, and nutrient management plans. For more detailed information on first year costs, see section (2) above.

2. Second and subsequent years: Increased reporting and paperwork result from the requirements for soil testing, lagoon liner performance testing, and lagoon waste testing. For more detailed information on costs for the second and subsequent years, see section (2) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet currently devotes 0.2 person-years to the review and issuance of animal feeding operations covered under the KNDOP program governed by 401 KAR 5:005. Given the added complexity of the reviews required, the cabinet lacks the resources to fully implement the new SWMP program. Additional staff time will be required to conduct a thorough review of the reports submitted by permit applicants. The cabinet will require two new engineers to adequately process the expected permit load. The cabinet also conducts site visits as part of the permitting process. Site inspections are necessary to determine the overall suitability of the site and verify that construction is commencing in accordance with the issued permit. There is an expected increase in the number of complaints to be investigated, compliance inspections, records reviews, and confirmation sampling. To meet expected demand, the cabinet will require four new field inspectors. Total personnel costs for two additional engineers and four additional inspectors are estimated at \$215,000.

2. Continuing costs or savings: One additional biologist and one additional groundwater hydrologist will be needed to collect surface and groundwater ambient monitoring data to establish conditions and trends in areas associated with swine feeding operations. This information will provide the basis to assess nutrient levels and the presence of pathogenic contamination as it pertains to ecological and human health, and to determine the overall effectiveness of this administrative regulation. Total additional personnel costs for these two positions are estimated at \$72,000. Additional staff time will be required on a continuing basis to review soil test data, lagoon liner performance data, and nutrient management plans. Staff time will need to be increased by cabinet agronomists, geologists, and engineers. Inspectors' time will need to be increased to verify the operation and compliance of the swine feeding operations, particularly those in the jurisdictions of the cabinet's western

regional offices.

3. Additional factors increasing or decreasing costs: If soil data or lagoon liner performance data indicate environmental degradation is occurring, additional testing and lagoon repairs may be required. These events would require further devotion of staff time to conduct a thorough review of the swine feeding operation. However, these testing requirements may prevent a future lagoon breach or environmental degradation, thus preventing significant damages (financial and otherwise) to the affected entities, the promulgating agency, and the environment. North Carolina environmental officials have indicated a 22-million-gallon lagoon breach in North Carolina resulted in a \$62,000 fine for the operator, and a multi-million dollar assessment and cleanup effort.

(b) Reporting and paperwork requirements: There will be an increase in the number of permit applications and reports submitted by swine operations. Applications and reports will require a thorough review by cabinet staff. There will also be an increase in the number of inspection reports that must be completed by cabinet inspectors.

(4) Assessment of anticipated effect on state and local revenues: Permit fees are not required for this administrative regulation. Therefore, state General Fund revenue and federal grants will be used for implementation and enforcement of this administrative regulation. Swine feeding operations may impact local revenues. New swine feeding operations could impact local tax revenues as provided by local tax ordinances. However, it is unclear whether this administrative regulation will affect the location decisions of swine feeding operations.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund revenue and federal grants will be used for implementation and enforcement of this administrative regulation. Existing resources are insufficient to fully implement the new SWMP program.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administration regulation will be implemented: The requirements of this administrative regulation apply throughout Kentucky.

(b) Kentucky: Most swine operations are located in western Kentucky, therefore the economic impacts are expected to be most prevalent in that region. Also, the siting restrictions, setbacks, and land application restrictions will further constrain the number of swine feeding operations locating in eastern Kentucky. Economic impacts are dependent on many factors. One component is property values. A Minnesota study by Taff, Tiffany and, Weisburg (1996) found that if newly locating swine feeding operations increase demand for housing through new hires or transferred labor, property values could increase. However, if swine feeding operations create negative effects on quality of life (odors, increased traffic, etc.) for the surrounding areas, property values could decrease. A Michigan study by Abeles-Allison and Connor found housing values decreased \$.43 for each additional hog within a five mile radius of the study area (or \$430 for each additional 1,000 swine). Palmquist, Roka, and Vukina (1996) studied the impacts on nearby housing prices of new hog operations in southeastern North Carolina. This study shows that the proximity of hog operations has a statistically significant and negative impact on property values. The results also show that monetary damages decrease with the increasing distance from the swine production facility to the house. The results also show that expansion of swine production in areas where swine concentration is already high will have a smaller negative effect on surrounding property values than when expansion occurs in low swine density areas. This regulation creates safeguards for proper operation and management of swine feeding operations. If implemented correctly by the affected entities, these negative effects can be minimized.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered extending the applicability of this regulation to all swine feeding operations that had more than 300 swine units. However, the cabinet rejected that approach because the cabinet considers the smaller operations to be adequately addressed under the current KNDOP permitting program. The cabinet also considered continuing the current permitting program for all operations regardless of their size, or establishing a threshold higher than 1,000 swine units. However those approaches were rejected since the volume of waste generated by the larger operations poses a threat to Kentucky's environment, and the potential environmental damage due to failure of a

lagoon is greater for the larger operations. To ease the burden on existing permitted operations, an expansion opportunity is provided. This provision allows existing permitted operations or existing permitted agricultural wastes handling systems to expand their operations or systems up to 1,250 swine units after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. Any additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. The cabinet may approve an alternative or experimental technology if the applicant demonstrates that the alternative or experimental technology will comply with the general environmental conditions required in this regulation, not pollute the waters of the Commonwealth, will not result in additional problems with odors, and will not cause additional health or environmental problems.

(8) Assessment of expected benefits of the administrative regulation: Benefits take the form of potential damages avoided. Properly operated and maintained operations will result from promulgation of this regulation. For a description of property value losses that could be avoided through this regulation, see (6)(b) above. In Western Kentucky, the tourism industry is a major contributor to the regional economy. This regulation creates safeguards to assure the proper operation and maintenance of swine feeding operations. By addressing the impacts of swine odor, the potential for lagoon failure, and the potential contributions of nutrients and other pollutants to area waters, this regulation is expected to protect those factors so critical to a vibrant tourist industry and overall quality of life. This administrative regulation requires adherence to strict construction standards for swine waste lagoons, along with quarterly groundwater monitoring around the lagoons. These, and other, requirements are expected to prevent contamination of groundwater from leaking lagoons. A Pennsylvania study by Abdalla (1990) indicated people undertake substantial averting actions in response to groundwater contamination and that such actions can have significant economic consequences. These averting actions can take the form of expenditures for point-of-use treatment systems, bottled water, and/or modifications to daily routines to avoid exposure to the contaminant. Abdalla found the total costs for the averting actions of households in the study area to be between \$252 and \$383 per household (in 1987 dollars). These figures underestimate the lower bound measure of total welfare loss for this case. Costs are not incurred for behavior modifications alone. Health effects (morbidity/mortality) can be significant, though difficult to quantify. Contamination of groundwater can also increase the level of anxiety and fear in a community (diminished quality of life). Finally, groundwater contamination can also impact surface water quality, particularly in Kentucky where a large portion of the state has underlying karst geology. This administrative regulation is expected to prevent these damages through siting requirements, lagoon construction standards, and quarterly groundwater monitoring. Surface water contamination is expected to be prevented through requirements on lagoon construction. This administrative regulation also establishes setback distances to allow for early warning of downstream areas in the event of a lagoon failure. This administrative regulation includes a requirement that holds large integrators jointly liable for their contract growers' permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health and welfare in Kentucky will be safeguarded through this regulation. Potential damages avoided are described in (6)(b) and (8) above.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This regulation is designed to provide safeguards to protect environmental and public health.

(c) If detrimental effect would result, explain detrimental effect: See discussion of potential damages in (6)(b) and (8) above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that may be in conflict, overlapping, or duplication. Any potential conflict or overlapping will be removed with the redefining of an agricultural waste handling system in 401 KAR 5:002. That term will be defined to exclude swine feeding operations, thus removing the potential conflict or overlapping.

(a) Necessity of proposed regulation if in conflict: Not applicable since there is no conflict.

(b) If in conflict, was effort made to harmonize the proposed ad-

ministration regulation with conflicting provisions: Not in conflict.

(11) Any additional information or comments: None.

(12) TIERING: Is tiering applied? Yes, tiering was applied in several instances in this regulation. The regulation applies only to those swine feeding operations that confine 1,000 or more swine units (about 2,500 finishing swine) or more, instead of all swine operations. Existing permitted swine feeding operations that increase the number of swine units to 1,000 or more would be subject to this administrative regulation. Existing operations that are currently under the 1,000 swine unit threshold would not be affected by this regulation, unless they expand above that threshold. However, this administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity should lower the number of potentially affected entities to less than the 150 systems stated earlier. Note however, that future expansion of these operations beyond the 1,250 swine unit threshold would require the new portion of the operation above 1,250 swine units to comply with this administrative regulation. Another example of tiering is in the amount of land needed for land application of the swine waste. Less land is needed in some instances if the owner or operator uses soil injection instead of surface application or other methods. Also, the barns and lagoons and land application areas must be at least a specified distance from given setback features.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No.
2. State what unit, part or division of local government this administrative regulation will affect. Not applicable.
3. State the aspect or service of local government to which this administrative regulation relates. Not applicable.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no effect on the expenditures.
Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 63:024. Repeal of 401 KAR 63:022.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation will repeal an existing air toxics administrative regulation which the cabinet has determined provides no substantial benefit to human health and the environment.

Section 1. 401 KAR 63:022, New or modified sources emitting toxic air pollutants, is hereby repealed.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 12, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 29, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: Carl Millanti, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Carl Millanti

(1) Type and number of entities affected: This administrative regulation will reduce the permitting requirements for future new or modified sources of toxic air pollutants in the Commonwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings in any geographical area of the Commonwealth as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation will not affect the cost of doing business in any geographical area of the Commonwealth.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting, and paperwork requirements will be reduced for future new or modified sources which would have been subject to the air toxics administrative regulation which is being repealed.

2. Second and subsequent years: The reduction of first year compliance, reporting, and paperwork requirements will continue into the future.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Agency resources currently being expended to enforce the administrative regulation which is being repealed can be redirected to activities which will better benefit human health and the environment.

2. Continuing costs or savings: Agency resources currently being expended to enforce the administrative regulation which is being repealed can be redirected to activities which will better benefit human health and the environment.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Agency inspection, monitoring and paperwork requirements will be reduced.

(4) Assessment of anticipated effect on state and local revenues:

This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will not require the expenditure of any funds.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in any geographical location.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The cabinet has determined that the administrative regulation which is being repealed is substantially ineffective and that the redirection of agency and industry resources would better benefit human health and the environment.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will allow the agency and industry resources which are currently being expended on an ineffective program to be redirected to other problems affecting the air quality in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect will result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented, agency and industry resources will continue to be expended on an ineffective program instead of being redirected to other programs which have a positive effect on human health and the environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation in order to repeal an existing administrative regulation which it currently must enforce that is not benefiting human health and the environment.

(11) TIERING: Is tiering applied? No. Tiering is not applied to this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. The state compliance standards are found at KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

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 gov-

ernment? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**JUSTICE CABINET
Department of Corrections
(New Administrative Regulation)**

501 KAR 2:070. Work release.

RELATES TO: KRS 533.010

STATUTORY AUTHORITY: KRS 196.035, 533.010(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 533.010(14) requires the Department of Corrections to promulgate an administrative regulation to identify procedures for implementing work release privileges granted by this statute.

Section 1. The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct.

Section 2. Upon denial of work release privileges, an incident report shall be completed stating the reasons for the suspension of these privileges and citing the disciplinary rule or administrative regulation that has been violated.

Section 3. The jailer or his designee shall review the incident report within twenty-four (24) hours to determine if the violation is sufficient to justify suspending the work release privileges, pending further review by the court.

Section 4. The jailer shall file the incident report and supporting documentation with the court of jurisdiction within the time specified in KRS 533.010(13).

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 13, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE CABINET
Kentucky Department of Corrections
(New Administrative Regulation)**

**501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility
Victim Notification System.**

RELATES TO: KRS Chapter 202A

STATUTORY AUTHORITY: KRS Chapter 202A

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 202A requires the Department of Corrections to promulgate administrative regulations governing the notification of a crime victim who requests notice of when an involuntarily committed person, who is

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the telephonic communication to the individual regarding the release or escape of an involuntarily committed person.

(2) "Register" means the electronic communication by the individual recording a telephone number to be contacted when the involuntarily committed person is released or escapes.

Section 2. (1) The chief administrator of a psychiatric or forensic psychiatric facility shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections.

(2) The Department of Corrections shall provide:

- (a) The ability to register for notification purposes; and
- (b) The notification for which the individual has registered.

Section 3. If the Department of Corrections provides the administrator with any instrument or equipment to provide victim notification, the instrument or equipment shall be secured. The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 13, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 5 state operated or state contracted psychiatric facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: 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. 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.

EDUCATION AND HUMANITIES CABINET Department for Libraries and Archives Division of Public Records (New Administrative Regulation)

725 KAR 1:070. Standards for documents presented for recording.

RELATES TO: KRS 171.450(1)(c), (2), 171.520

STATUTORY AUTHORITY: KRS 171.450(1)(c), (2), 171.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(c) requires the Department for Libraries and Archives to establish standards and procedures for:

(1) Recording, managing, and preserving public records; and

(2) Reproduction of public records by photographic or microphotographic process. KRS 171.520 requires the department to prescribe policies for state and local agencies for efficient record management programs. County clerks are required by statute to record, manage, preserve and make accessible instruments lodged for recording with the clerks. This administrative regulation establishes standards for print clarity, paper quality, and document size uniformity of these instruments.

Section 1. Definitions. (1) "Dark" means equal to or darker than Step 8 on a Stouffer Opaque Sensitivity Guide or "Gray Scale".

(2) "Hand printing" or "hand writing" means writing done by hand with a pen or pencil.

(3) "Nonessential information" includes information that does not affect the validity of a document, such as instructions, page numbers, form number and other notations.

(4) "Printed" means an image produced by a mechanical device, such as a printing press, typewriter, and computer printer.

Section 2. Document Size. (1) An instrument lodged for record in the office of a county clerk shall:

(a) Consist of one (1) or more individual sheets measuring eight

and one-half (8 1/2) inches by eleven (11) inches in size;

(b) Not be permanently bound;

(c) Not be a continuous form; and

(d) For each page except the first page and the final page, have a minimum one (1) inch top, side and bottom margin;

(e) For the first page and the final page, have a minimum:

1. Two (2) inch top margin;
2. Two (2) inch bottom margin; and
3. One (1) inch side margin.

(2) A map, plat, drawing, will, and instrument whose specific size is mandated by federal or state law shall be exempt from the requirements of this section. A map, plat or drawing shall contain a three (3) inch by three (3) inch space at the bottom right corner.

Section 3. Print Clarity. A printed instrument lodged for record in the office of a county clerk shall meet the following requirements:

(1) It shall be printed with dark ink, on white paper that shall not have background color, images or writing.

(2)(a) Except as provided by paragraph (b) of this subsection, a printed character shall be no smaller than eight (8) point, standard, noncursive font type.

(b) Nonessential information that is printed or written in the margin, and instructions for completing a form, shall be exempt from the provisions of paragraph (a) of this subsection.

(3) A printed character shall be crisp, clean, complete and legible.

(4) It shall have no superfluous decorations such as wax, ribbons and gold seals.

Section 4. (1) Except as provided by subsection (2) of this section, a handwritten signature, date, and other portions required to be completed by handwriting shall be written in dark ink.

(2) Blue ink shall be accepted if it is dark when photographically or electronically reproduced.

Section 5. An instrument lodged for record in the office of a county clerk shall be printed on a minimum of twenty (20) pound bond paper.

Section 6. A county clerk shall not be prohibited from filing an instrument that does not meet the requirements established by this administrative regulation if the instrument is created, certified, or accepted for filing or recording by the United States government, or the government of any nation or state.

JAMES A. NELSON, State Librarian and Commissioner
CHERYL LALONDE MOONEY, Assistant Attorney General

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 10 a.m. at the Kentucky Department for Libraries and Archives Board Room. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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 documents 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: Darrell Gabhart, Local Records Branch Manager, Department for Libraries and Archives, Public Records Division, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Phone: (502) 564-8300, ext. 255; Fax: (502) 564-5773.

REGULATORY IMPACT ANALYSIS

Contact Person: Darrell Gabhart

(1) Type and number of entities affected: 120 county clerks' offices and individuals, companies, and other agencies presenting a document for official recording in a county clerk's office will be affected.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There were 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: There were 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: Recording paper and bookbinder cost will be reduced by an average of 20%. Since many clerks will continue to use current stock, this saving may not be fully realized the first year of implementation. Recording fees may increase slightly due to a small increase in the number of pages per document. This could be off set by users taking advantage of the provision of KRS 382.295 allowing the filing of standard mortgage clauses that can be attached by reference to the specific mortgage, lien, or other document being presented for recordation. These provisions will greatly increase the legibility of documents, resulting in saving in labor, recording time and copying costs, especially when electronic or photographic systems are being used. Users will receive better, more legible copies.

2. Second and subsequent years: Savings in supplies and equipment will continue due to the standardization in size. Savings in the costs of recording by photo reproduction or digitization of the original will be realized by the faster, more accurate throughput of a standard size, more legible original.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no costs or savings realized by the Kentucky Department for Libraries and Archives the first year.

2. Continuing costs or savings: No direct continuing cost will be realized. There should be indirect savings in providing access to these records in future years due to better legibility.

3. Additional factors increasing or decreasing costs:

(b) Reports and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Recording fees may increase slightly due to increased number of pages on multipage documents.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None 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 public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods: None. Reasons why alternatives were rejected: This change can only be uniformly brought about through administrative regulation.

(8) Assessment of expected benefits: In addition to the cited savings to the county clerk's office, implementation of this administrative regulation will greatly enhance a clerk's ability to use automated recording and retrieval devices such as optical imaging systems, thus providing much better, faster and more accurate, citizen access to the vital public records in his office.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on public health and environmental welfare in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation would not effect the environment or public health.

(c) If detrimental effect would result, explain detrimental effect: There will be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy in conflict with, overlapping or duplicating this administrative regulation.

(a) Necessity of proposed if in conflict: This proposal is not in

conflict with any statute, administrative regulation or government policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No effort to harmonize the proposed administrative legislation with other provisions was made because there is no conflict.

(10) Any additional information or comments: The advantages of standardization of letter size documents has long been recognized by: Professional records management groups, such as the Association of Records Managers and Administrators (ARMA), who published the results of a study on the subject in 1991 called "ELF = Eliminate Legal Size Files - A Guideline"; by a number of state governments and federal agencies, and; by the Administrative Office of the Courts. At the present time, county clerks must accept documents of any size, forcing them to purchase and maintain copy equipment and storage equipment that will accommodate the largest of documents presented to them. This increases their costs and uses more valuable storage space. In addition, documents presented to the clerk for recordation vary greatly in legibility due to size of type, faded copies in color and shades and poor handwriting. Some documents do not allow enough blank space for the clerk's recording stamp to be applied without covering information. All of these problems are compounded when, as more and more clerks are doing, a county clerk utilizes microfilm, photocopy machines or optical scanners to provide preservation, certified copies or digitized access of the records. By requiring that a standard sized, well laid out and legible document is presented to a clerk, this administrative regulation will enable a county clerk to fulfill his statutory recording duties faster, more efficient, more accurate and less costly. The end result will be greatly enhanced public access now and in the future.

(11) TIERING: Is tiering applied? No. Tiering was not used since this administrative regulation will apply to all individuals or entities equally. The information required is necessary if the members of the General Assembly, public, and the regulated entities are to determine: (a) compliance with KRS Chapter 13A and other applicable statutes; (b) whether statutes need to be amended or created; and (c) what changes might be required in future state budgets.

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. The county clerk's office.

3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation relates to the county clerk's statutory mandate to act as the official recorder and custodian of legal documents (KRS Chapters 382, 73, 376, and 355).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The specific fiscal impact of this administrative regulation on the office of the county clerk or on state government revenues is not possible to predict. The county clerk is assigned specific fees for recording legal instruments. Many of these fees are designed with a base amount for documents up to a specified number of pages, with a specified additional amount assessed for each page over the base. By going to a standard letter size page and eliminating extremely small size type clauses some of the traditionally larger documents, leases, mortgages and liens, for instance, will contain more pages and therefore a larger fee will be assessed. However, this may not be the case if this administrative regulation acts as a catalyst for more regular customers, such as lawyers, mortgage companies and banking institutions, to take advantage of the statutory provision of filing standard document clauses with the clerk, under the user name, and to attach their standard language to a document by reference when officially recording it. This practice would effectually eliminate all but the base fee being denied for a very large percentage of documents filed, thus reducing to some extent the overall amount of fees collected. With these variables it is

not possible to predict the specific fiscal effect, if any, the standard paper size will have on revenues.

Expenditures (+/-): County clerks should realize approximately a 20% savings through the purchase of letter size recording paper (32 or 36 lbs.) and bookbinders as well as the purchase of any copying, scanning or storage equipment.

Other Explanation: KRS 171.520 requires the department to prescribe policies for state and local agencies for efficient record management programs. County clerks are required by statute to record, manage, preserve and make accessible instruments lodged for recording with the clerks. County clerks are increasingly finding it more difficult to provide users access to a legible record, in a reasonable time frame. Many of the documents presented for recording are faded, have colored ink or contain clauses in such small print that they cannot be read, especially when photocopied, microfilmed, or digitally scanned. They are also experiencing problems with the format and layout of some documents that do not provide room for a clerks recordation stamp on the margins. This administrative regulation establishes standards for print clarity, paper quality, and document size uniformity of these instruments and should provide the county clerks a foundation to ensure that they can fulfill adequately their record keeping mandates. Since the county clerk keeps the vital records of every citizen, everyone will benefit from that improvement.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

804 KAR 4:195. Repeal of 804 KAR 4:190.

RELATES TO: KRS 243.040

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: 804 KAR 4:190, Out-of-state brewers bond is no longer needed because KRS 243.040 was amended in 1998 to create a new license for out-of-state brewers selling malt beverages to Kentucky distributors.

Section 1. 804 KAR 4:190, Out-of-state brewers bond, is hereby repealed.

RICHARD N. JOHNSTONE, Commissioner

LAURA DOUGLAS, Secretary

REBECCA W. GOODMAN, General Counsel

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this new administrative regulation shall be held on September 29, 1998, at 9 a.m., in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 1998, five 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 new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to contact person. CONTACT PERSON: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, phone 502-564-4850, fax 502-564-1442.

REGULATORY IMPACT ANALYSIS

Contact person: Rebecca W. Goodman

(1) Type and number of entities affected: All out-of-state brewers, 100 +/-.

(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: Minimal paperwork.

2. Second and subsequent years: None.

(3) Effects on the promulgating administrative body: No new employees or forms needed.

(a) Direct and indirect costs or savings: None

(b) Reporting and paperwork requirements: None

1. First year: No costs to promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: No change.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No implementation and enforcement 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 public comments received.

(b) Kentucky: No public comments received regarding repeal of this regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were 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: None

(b) State whether a detrimental effect on enforcement and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied to the repeal of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No federal mandate.

2. State compliance standards. Licensing standards applied equally to all licensees.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government to which this administrative regulation will affect. None

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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This new administrative regulation will repeal an existing administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (New Administration Regulation)

804 KAR 4:350. Out-of-state brewers' licenses.

RELATES TO: KRS 243.040(12), 243.157

STATUTORY AUTHORITY: KRS 241.060, 243.040(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.040 was amended in 1998 to create a new license for out-of-state brewers selling malt beverages to Kentucky distributors. This administrative regulation tiers the requirements for licensing and permits the repeal of 804 KAR 4:190, which is no longer required.

Section 1. Any out-of-state brewer, distributor, importer for a brewer, or any importer of a non-U.S. brand of malt beverage who is licensed to do business by the state in which they are located, and is registered with the Kentucky Revenue Cabinet, may obtain a license for the purpose of importing malt beverages into the state of Kentucky, subject to the following requirements:

(1) Any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires a license to import more than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state shall apply for an out-of-state brewers' license and submit all required documentation and a fee described in KRS 243.040(12).

(2) Any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires a license to import less than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state shall apply for a limited out-of-state brewers' license and submit all required documentation and an annual fee of \$250.

Section 2. Out-of-state applicants shall be exempt from the requirements of KRS 243.360.

Section 3. (1). ABC-Form 745, an "Out-of-State Brewers' License" (06/15/98 Edition), Department of Alcoholic Beverage Control, is incorporated by reference.

(2) ABC-Form 745-A, a "Limited Out-of-State Brewers' License" (06/15/98 Edition), Department of Alcoholic Beverage Control, is incorporated by reference.

(3) The licenses may be inspected, copied, or obtained at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD N. JOHNSTONE, Commissioner

LAURA DOUGLAS, Secretary

REBECCA W. GOODMAN, General Counsel

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this new administrative regulation shall be held on Tuesday, September 29, 1998, at 9 a.m., in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, September 22, 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 new administrative regulation. Send written notification of intent to be heard at the

public hearing or written comments on the new administrative regulation to the contact person.

CONTACT PERSON: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, phone 502-564-4850, fax 502-564-1442.

REGULATORY IMPACT ANALYSIS

Contact person: Rebecca W. Goodman

(1) Type and number of entities affected: The agency estimates 100+/- licenses to be issued.

(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 impact. 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: Minimal paperwork; licensing application.

2. Second and subsequent years: Minimal paperwork; license renewal.

(3) Effects on the promulgating administrative body: No new employees needed. New form to be implemented for the new licenses.

(a) Direct and indirect costs or savings: None

(b) Reporting and paperwork requirements: Minimal

1. First year: No costs to promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: Anticipate an increase of approximately \$100,000 in agency revenues. No anticipated effect on local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Licensing fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact in Kentucky since regulation applies to out-of-state entities.

(b) Kentucky: See (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were 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: None

(b) State whether a detrimental effect on enforcement and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy, which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None. 804 KAR 4:190, Out-of-state brewers' bond to be repealed by 804 KAR 4:195.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: In-state and out-of-state breweries in favor of implementation of this new administrative regulation.

(11) TIERING: Is tiering applied? Tiering was applied. "Small" importers (as defined by KRS 243.157 as less than 25,000 barrels annually) pay \$250 annually for the license, while those importing over 25,000 barrels annually will pay the out-of-state brewer's fee of \$1,500.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No federal statute or regulation constituting a federal mandate.

2. State compliance standards. Licensing standards applied equally to all in-state and out-of-state licensees.

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government to which this administrative regulation will affect. None

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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This new administrative regulation creates an out-of-state brewers' license and will have no effect on expenditures and revenues of a local government.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: 1998 Ky. Acts ch. 496 sec. 1, 9-11, 15-23

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496 sec. 9(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 9(7) provides that the commissioner may promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustments for case characteristics or health status.

(2) "Base new business rate change" means, for any product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period, and for any product within a market segment class of business shall be equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) The definition of "base premium rate" shall be governed by 1998 Ky. Acts ch. 496, sec. 1.

(4) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(5) "Date of filing" means the date the department confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the department.

(6) "FFS" means a fee for service product type.

(7) The definition of "Guaranteed Acceptance Program" or "GAP" shall be governed by 1998 Ky. Acts ch. 496, sec. 1.

(8) "Health benefit plan region" or "geographic region" means each one of the eight allowable rating regions for health benefit plans identified in Form LH-33.

(9) "HMO" means a health maintenance organization product type.

(10) The definition of "index rate" shall be governed by 1998 Ky. Acts ch. 496, sec. 1.

(11) The definition of "large group" shall be governed by 1998 Ky. Acts ch. 496, sec. 1.

(12) "POS" means a point of service product type.

(13) "PPO" means preferred provider organization product type.

(14) The definition of "small group" shall be governed by 1998 Ky. Acts ch. 496, sec. 1.

Section 2. Scope. Every health benefit plan rate filing to which the standards of 1998 Ky. Acts ch. 496, sec. 9 apply shall include the information required by this administrative regulation. The period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin and the insurer shall not use the proposed rates until the date of filing. The filing and fee shall not be deemed received until the department has confirmed that all of the information required by this administrative regulation has been provided and that the appropriate fee has been received.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form LH-32, the Health Benefit Rate Filing Information Form;

(b) \$100 filing fee or the domiciliary state fee, whichever is greater;

(c) Form LH-1, Face Sheet and Verification Form;

(d) Signed actuarial memorandum prepared in accordance with Section 6 of this administrative regulation;

(e) The Income and Expense Worksheet; and

(f) Certification Form LH-34.

(2) Two (2) copies of all written material shall be submitted to the department.

(3) One (1) copy of all written material including any amendment, update, additional information, or response to an inquiry from the department shall be submitted to the Attorney General's Office by the insurer at the same time as the submission to the Department of Insurance.

(4) The insurer shall provide a self-addressed, postage-paid envelope large enough to accommodate a return copy when filing is approved or disapproved by the commissioner.

(5) One (1) copy of the annual report to shareholders or policyholders of the company shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment as follows:

(a) Individual;

(b) Small group;

(c) Association;

(d) Employer-organized association; and

(e) Large group.

(2) A large group rate filing may include each product type offered as follows:

(a) FFS;

(b) PPO;

(c) POS; and

(d) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

(a) FFS and PPO; or

(b) POS, HMO, and PPO.

Section 5. Employer-organized Association Rate Filings. (1) Each employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing. Each employer-organized association that provides the insurer with written permission to have rates based on experience other than their own may have experience combined for rate determination. Proposed rates for a combination of associations shall be contained in one (1) filing.

(2) If an insurer is proposing to begin marketing a health benefit plan to the employer-organized association market segment, a rate filing may be based on the standard plan benefits, including appropriate formulas and rate factors within the limitations outlined in 1998 Ky. Acts ch. 496, sec. 11. This filing would include factors for any plan likely to be offered and would provide a detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(3) Within thirty (30) days of receiving written permission from an employer-organized association, the insurer shall submit two (2) copies of the written permission to the commissioner. The written permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the employer-organized association's own experience;

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer; and

(e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) American Academy of Actuaries Actuarial Standard of Practice No. 8, Regulatory Filings for Rates and Financial Projections for Health Plans; and

(b) Interpretative Opinion 3, Professional Communications of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying when the company will begin using the proposed rates;

(c) A discussion of rate development which shall include a detailed explanation of the following:

1. The effects of each of the following mandated benefits which discussion shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:

a. Autism;

b. Cochlear implants;

c. Diabetes;

d. Cancer drugs;

e. Women's health; and

f. Hospice.

2. The claim cost development that shall include an explanation of the following:

a. Methodology;

b. Any assumption including the following:

(i) Trend;

(ii) Any benefit change;

(iii) Any utilization or cost-per-service change;

(iv) Any demographic change;

(v) Any change in medical management;

(vi) Any change in provider contracts;

(vii) Any other assumption used; and

c. Experience, including exposures or members, earned premium, paid claims, incurred claims and incurred loss ratio, for the last three (3) years for this product, or for a similar product if this filing is for a new product;

3. Development and printout of the base premium rates, index rates, corresponding highest premium rates and any applicable GAP premium rates for the standard plan option by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor. If the filing contains more than one (1) product, the information required by this subparagraph shall be provided for each product separately. For any filing containing proposed rates for more than (1) one class of business, the information required in this sub-

paragraph shall be provided separately for each class of business.

4. Every factor for each case characteristic including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. Only the eight (8) health benefit plan regions identified in Form LH-33 may be used for a geographic region factor adjustment.

b. Include any healthy lifestyle discount factor, along with an explanation of the determination of that factor, and where that factor is applicable;

5. The anticipated pricing loss ratio including a detailed justification of the following load factors:

a. The percentage allocated for the administrative expense assumption, with an explanation for any change from the factor used for existing rates. Explain how these costs are allocated among each benefit plan design and attach demonstrative documentation as an exhibit;

b. The percentage allocated for the commission assumption with an explanation for any change from the factor used for existing rates;

c. The percentage allocated for federal, state and local government tax assumptions with an explanation for any change from the factor used for existing rates;

d. The percentage allocated for the investment income assumption with an explanation for any change from the factor used for existing rates;

e. The percentage allocated for the profit and contingency assumption with an explanation for any change from the factor used for existing rates; and

f. The percentage allocated for any other factor;

(d) Detailed explanation, with example, of the following:

1. The method for determining a small group composite rate;

2. When a small group composite rate is recalculated; and

3. The group size that is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or any other method of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies. If applicable, the two (2) individual GAP benefit plans, other than the Standard Benefit Plan, shall be identified. Any other benefit plan offered to a GAP participant shall also be identified.

(f) Detailed discussion of the manner in which the projected amount of net assessments and refunds under 1998 Ky. Acts ch. 496, secs. 21 and 22 is included in establishing the proposed rates in the filing as required by 1998 Ky. Acts ch. 496, sec. 9(6);

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies and the applicable annual trend rate;

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to

the following markets:

a. Individual;

b. Association;

c. Employer-organized association; and

d. Small group business; and

2. That all the proposed rates are in compliance with 1998 Ky. Acts ch. 496, secs. 10, 11, and 19.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information:

(a) The information provided in Section 6(2)(a), (b), (c)1, (c)2, (c)5, (f), (g), (h) and (i);

(b) Development of rating basis including each adjustment for the following:

1. Age;

2. Gender;

3. Family composition;

4. Benefit plan;

5. Industry;

6. Healthy lifestyle; and

7. Any other adjustment;

(c) Any formula for new and renewal business including a definition of each term used in the formula;

(d) Credibility criteria used in conjunction with experience rating;

(e) Detailed explanation of any change in the manual rating formula or experience rating formula;

(f) Detailed explanation of any change in factors that would be used in any formula;

(g) Any periodic trend rate applied in the formula;

(h) The composite effect of any change in formula and formula factors; and

(i) Detailed explanation of any trend assumption used in experience rating.

(2) Certification Form LH-34 shall not be required for a large group rate filing.

Section 8. Material Incorporated by Reference: (1) The following material is incorporated by reference:

(a) Form LH-32, "Health Benefit Plan Rate Filing Information Form (7/98 Edition)";

(b) Form F-1 LH, "Face Sheet and Verification Form (4/98 Edition)";

(c) Actuarial Standards of Practice No. 8, "Regulatory Filings for Rates and Financial Projects for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;

(d) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;

(e) Interpretive Opinion 3, "Professional Communications of Actuaries (1992 Edition)", American Academy of Actuaries;

(f) Income and Expense Worksheet (1998 Edition);

(g) Form LH-33, "Health Benefit Plan Regions (7/98 Edition)"; and

(h) Certification Form LH-34 (7/98 Edition).

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: July 31, 1998

FILED WITH LRC: August 3, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 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 com-

ment 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: There are approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. Currently, there are approximately 25 insurers writing health insurance in this 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: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will establish health benefit plan rate filing requirements applicable to all insurers that issue, deliver, or renew health benefit plans in Kentucky. Insurers will be required to file information regarding health insurance rates needed by the commissioner to determine whether the rates should be approved or disapproved. The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file rate information under 806 KAR 17:150E, the cost to the insurers for filing under this administrative regulation should not increase dramatically, if at all.

2. Second and subsequent years: Insurers will be required to provide the department with new rate information in the event that any filed rate is changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department currently collects and reviews health benefit rate filing information pursuant to 806 KAR 17:150E. The department does not anticipate that this new administrative regulation regarding rate filing requirements will increase the costs already incurred.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will be required to review health insurance rate filings submitted pursuant to this administrative regulation. Following review, the department will make a determination as to the approval or disapproval of the rate filing. In some instances, a hearing on the rate filing may be necessary.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments

regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department, in 806 KAR 17:150E, promulgated new rate filing requirements to implement 1996 Ky. Acts ch. 496. Because the emergency administrative regulation will eventually expire, the department must promulgate an ordinary administrative regulation in order to maintain the rate filing requirements. No other alternatives were 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: This administrative regulation will enable insurers filing rates with the department to comply with the provisions of 1998 Ky. Acts ch. 496. This regulation will also facilitate consistent and efficient compliance with KRS Chapter 496.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, the department would not likely collect an adequate amount of information to determine if a company's rates should be approved or disapproved. Therefore, it is for the benefit of the public that appropriate guidelines are in place to regulate the rate filings submitted by insurers to the department.

(c) If detrimental effect would result, explain detrimental effect: Without this administrative regulation, there would be no uniform standards or guidelines for submitting health benefit plan rate filings to the department. The absence of uniform standards would inhibit the department's ability to perform an adequate review of the rate filings.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This ordinary administrative regulation will replace 806 KAR 17:150E that currently governs health benefit plan rate filing requirements.

(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 is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew health benefit plans in Kentucky.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

902 KAR 55:105. Requirements for controlled substance prescription blanks.

RELATES TO: KRS 218A.030 to 218A.140, 218A.170 to 218A.240, 1998 GA HB 115, secs. 14, 16, 17, 18, 19, 20, 21

STATUTORY AUTHORITY: KRS 194.050, 211.020, 218A.250, 1998 GA HB 115, sec. 14

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 115, sec. 14 of the 1998 General Assembly requires the cabinet to promulgate administrative regulations that establish security requirements for a prescription blank used by a practitioner to write a prescription for a controlled substance. The purpose of this administrative regulation is to establish minimum requirements that will decrease the potential for forgery or alteration of a prescription or a prescription blank for a controlled substance.

Section 1. Definitions. (1) "Logo" means a symbol utilized by an individual, professional practice, professional association, or hospital.

(2) "Security prescription blank" means a prescription blank that conforms to the requirements of Section 3 of this administrative regulation.

Section 2. Security Prescription Blanks Required. (1) After January 1, 1999, a written prescription for a controlled substance shall be on a security prescription blank.

(2) A prescription that is not written on a security prescription blank shall not be valid, unless the cabinet has granted a waiver to

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

the practitioner who wrote the prescription or to the pharmacy that dispenses it.

Section 3. Requirements of a Security Prescription Blank. (1) A prescription for a controlled substance must contain the following security features:

(a) A latent, repetitive "void" pattern screened at five (5) percent in reflex blue must appear across the entire front of the document when the prescription is photocopied;

(b) A custom artificial watermark must be printed on the back-side of the base paper so that it may only be seen at a forty-five (45) degree angle. The water mark shall consist of the words "Kentucky Security Prescription", appearing horizontally in a step-and-repeated format in five (5) lines on the back of the prescription using twelve (12) point Helvetica bold type style;

(c) An opaque R symbol must appear in the upper right-hand corner, one-eighth (1/8) of an inch from the top of the prescription blank and five-sixteenths (5/16) of an inch from the right side of the prescription blank. The symbol must be three-fourths (3/4) of an inch in size and must disappear if the prescription copy is lightened;

(d) Six (6) quantity check off boxes must be printed on the form and the following quantities must appear:

1. ☐ 1-24;
2. ☐ 25-49;
3. ☐ 50-74;
4. ☐ 75-100;
5. ☐ 101-150;
6. ☐ 151 and over;

(e) A logo may appear on the prescription blank. The upper left one (1) inch square of the prescription blank is reserved for the purpose of a logo;

(f) The following statement must be printed on the bottom of the prescription blank: "Prescription is void if more than one (1) prescription is written per blank";

(g) Refill options that may be circled by the practitioner must appear below any logo and above a signature line on the left side of the prescription blank in the following order: Refill NR 1 2 3 4 5;

(h) A prescription blank shall be four and one-quarter (4¼) inches high and five and one-half (5½) inches wide; and

(2) A prescription shall bear the preprinted, stamped, or manually printed name, address and telephone number of the prescribing practitioner.

(3) A prescription blank for a controlled substance shall not contain:

(a) An advertisement on the front or the back of the prescription blank;

(b) The preprinted name of a controlled substance;

(c) The written, typed, or rubber-stamped name of a controlled substance until the prescription blank is signed, dated and issued to a patient.

(4) If a prescription for a schedule III, IV, or V controlled substance is to be transmitted to a pharmacy by facsimile, prior to transmission the practitioner or practitioner's agent shall write or stamp "FAXED" on the face of the original prescription along with the date and the person's initials.

Section 4. Other Requirements. (1) Only one (1) prescription may be written per prescription blank.

(2) If the pharmacist uses due diligence in ascertaining the validity of the prescription, a prescription for a schedule III, IV, or V controlled substance that is transmitted to a pharmacy by facsimile shall be exempt from the requirement of blue ink in Section 3(1)(a) of this administrative regulation and the requirement of a watermark in Section 3(1)(b) of this administrative regulation.

(3) If a prescription for a schedule III, IV or V controlled substance is transmitted to a pharmacy by facsimile, the original prescription shall be filed in the patient's record.

Section 5. Exceptions. A pharmacist shall not be required to use a security prescription blank to record an oral prescription or a transferred prescription.

Section 6. Printers, Reproducers or Distributors of Security Pre-

scription Blanks. A printer, reproducer or distributor of security prescription blanks shall require a written and signed purchase order or request for security prescription blanks. The written request shall remain on file for two (2) years.

Section 7. Waiver of Security Prescription Blanks. (1) A practitioner or a pharmacy may apply in writing to the cabinet for a waiver from the requirement for security prescription blanks. A request for a waiver shall include:

(a) The security features provided by the alternative system proposed by the applicant; or

(b) The format of the alternative prescription blank.

(2) The alternative proposed by the applicant shall provide a level of security equivalent to a security prescription blank.

(3) The cabinet shall grant or deny the application in writing.

(4) When a waiver has been granted, the cabinet may suspend or revoke the waiver if the alternative system or alternative prescription blank does not provide security equivalent to a security prescription blank.

(5) Upon notification of intent to deny, suspend or revoke the waiver of the requirement for a security prescription blank, the practitioner or pharmacy may request a hearing. The administrative hearing shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held September 21, 1998, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notification of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Danna E. Droz

(1) Type and number of entities affected: 14,000 pharmacies and physicians, as well as an indeterminate number of printers or reproducing companies will be affected by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The cost of prescription blanks will increase for those practitioners who purchase their own prescription blanks. There is no effect on competition among printers because prescription blanks may be printed or produced by anyone that meets the requirements.

2. Second and subsequent years: The costs will be the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the administrative regulation creates re-

quirements to help reduce the incidence of prescription forgery or alteration experienced by practitioners and pharmacies.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by these amendments.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received related to this issue.

(b) Kentucky: No comments received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because the success of similar regulations in other states.

(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 expected benefit is a decrease in the number of prescriptions for controlled substances that are forged or altered.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, controlled substances will continue to be diverted from legal use to illegal markets.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates these amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because a provision for a waiver of the requirements is included in the administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. The only state standards are those set forth in this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

902 KAR 55:115. Drug possession by hospice or home health agency.

RELATES TO: KRS 217.005 to 217.215, 217.992

STATUTORY AUTHORITY: KRS 194.050, 211.090, 217.125, 1998 GA HB 649

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 649 of the 1998 General Assembly authorizes the Cabinet for Health Services to promulgate administrative regulations that implement the possession of certain drugs by a hospice or home health agency.

The purpose of this administrative regulation is to establish criteria that a pharmacy, hospice or home health agency must meet in order to insure that drugs belonging to a pharmacy, that are stored in a hospice or home health agency, are safe and effective for administration to patients.

Section 1. Authorized Employees. A pharmacy may place a legend drug listed in Section 5 of House Bill 649 of the 1998 General Assembly with an authorized employee of a hospice or a home health agency if the pharmacy maintains a record of the license that authorizes the employee to administer legend drugs.

Section 2. Written Agreement. Each party to a written agreement between a pharmacy and a home health agency or a pharmacy and a hospice shall maintain a copy of the written agreement.

Section 3. Protocol. The protocol may be included in the written agreement or may be a separate document. If the protocol is a separate document, a copy shall be maintained by the pharmacy and by the hospice or home health agency. The protocol shall be reviewed not less than annually and modified if necessary.

Section 4. Records. (1) The pharmacy record of a drug placed with authorized employees of a hospice or home health agency shall be retained for five (5) years.

(2) The record of a drug administered by authorized employees of a hospice or home health agency shall be retained by the pharmacy for five (5) years.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held September 21, 1998, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by September 14, 1998. If no notification of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Contact person: Danna Droz

(1) Type and number of entities affected: Approximately 1350 pharmacies, hospices and home health agencies are affected by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The compliance and paperwork required by this regulation conforms to standard pharmacy practices. No reporting is required.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.
- (4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.
 - (b) Kentucky: No comments were received related to this issue.
- (7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because they would conflict with the requirements of HB 649 Section 5.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Patients served by a hospice or home health agency will have improved access to certain legend drugs.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No
 - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Tiering was not applied because the statute applies to all pharmacies, hospices or home health agencies regardless of location or number of patients served.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

905 KAR 2:141. Repeal of 905 KAR 2:140.

RELATES TO: KRS 199.892-896, 45 CFR 98, 256, 257, PL 99-457 Part H, 94-142.2.

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.8994, 45 CFR 98.41, 1998 Ky. Acts ch. 426, EO 98-731, PL 104-193

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.8994 authorize the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and to provide uniform administration of child day care funds. This administrative regulation acts specifically to repeal 905 KAR 2:140, Child day care programs, which is no longer needed because child day care assistance is now regulated by 905 KAR 2:160E, filed with the Legislative Research Commission on April 20, 1998.

Section 1. 905 KAR 2:140, Child day care programs, is hereby repealed.

DIETRA PARRIS, Commissioner
 VIOLA P. MILLER, Secretary
 CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: July 31, 1998

FILED WITH LRC: August 5, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in the

Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Deborah Whitehouse

- (1) Type and number of entities affected: None
- (2) Direct and indirect cost or savings to those affected: None
- (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.
- (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.
- (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 cost or savings: None
 1. First year: None
 2. Continuing cost 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: There is no fiscal impact associated with the filing of this administrative regulation.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation:
 - (a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent is published.
 - (b) Kentucky: To be determined after the Notice of Intent is published.
- (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: No
 - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (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 of 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? If yes, complete questions 2-4. No

2. State what unit, part or division of local government this administrative regulation will affect. N/A

3. State the aspect or service of local government to which this administrative regulation relates. N/A

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: 905 KAR 2:141 is a new regulation which acts specifically to repeal 905 KAR 2:140, Child day care programs, which is no longer needed because child day care assistance is now regulated by 905 KAR 2:160E, filed with the Legislative Research Commission on April 20, 1998. This repealer regulation will have no fiscal impact on local governments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. USC 601 et seq. and 45 CFR 98.41

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state is repealing 905 KAR 2:140, Child day care programs, and all six existing day care programs have been combined into one regulation, 905 KAR 2:160E which is currently in effect.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. These standards are met by 905 KAR 2:160E.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

905 KAR 2:160. Child day care assistance program.

RELATES TO: KRS 199.892-896, 45 CFR 98

STATUTORY AUTHORITY: KRS 194.050(1), 199.892, 199.8994, 45 CFR 98.41, 7 USC 2015(d), 42 USC 601 et seq., 1998 Ky. Acts ch. 426, 615, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Fund and for child care services pursuant to 904 KAR 2:017 and 904 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance program.

Section 1. Definitions. (1) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education required by K-TAP and if postsecondary, consistent with employment goals and if

a teen parent, participation in education leading to a high school diploma or a general equivalency diploma.

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Center-based child care" means a Type I licensed child day care facility.

(4) "Certificate" means a payment mechanism provided by the cabinet or designee and used by a family to secure child day care from the provider of choice.

(5) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) "Child care and development fund, (CCDF)" means child care assistance provided to families throughout the state to improve the affordability, quality and availability of child care services for a low-income family to work, participate in K-TAP or for protection and teen parents.

(7) "Child protective service case" means a case registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may also include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families or teen parents.

(8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact, which is intended to protect a child from immediate danger.

(9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) "Dependent care disregard" means a method of allowing a deduction from the gross income for child care expenses for K-TAP and medical assistance recipients with earned income and for food stamp recipients with earned income or who are in training or educational programs which are preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay child care expenses.

(11) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided for child protective services cases, a family shall meet both need and income status criteria.

(12) "Employment" means public or private, full- or part-time, permanent or temporary work for which wages are paid, including self-employment.

(13) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDF by completing the application for provider enrollment and obtaining approval by the Department for Community Based Services.

(14) "Family" means one (1) or more adults and children related by blood or law, including stepparents, and other person standing in loco parentis who is operating or functioning in the place of the parent, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Family child care counselor" means cabinet or designee staff who work strictly with the day care assistance program. The family child care counselor may provide services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Fund, (CCDF), Food Stamp Employment and Training Program (FSETP), and other federally funded programs that the cabinet deems the best interest of parents may be served through the child day care assistance program.

(17) "Food Stamp Employment and Training Program (FSETP)" means a program administered by the cabinet and operated by the Workforce Development Cabinet, Department for Employment Services, pursuant to 904 KAR 3:042.

(18) "Group home child care" means a Type II licensed child day care facility.

(19) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's "Temporary Assistance for Needy Families (TANF) Program" means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

(20) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(21) "Physical or mental incapacity" means a child under the age of nineteen (19) who has multiple or severe problems diagnosed by a physician or qualified professional, as defined in KRS 202A.011, that prevent the child from caring for himself for a part of the day.

(22) "Priorities" mean that the client groups identified for receipt of child day care are ranked by priority.

(23) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed child day care facility, certified family child care home, relative or enrolled home.

(24) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides child care services only to a:

1. Grandchild;

2. Great grandchild;

3. Niece or nephew; or

4. Sibling, who resides in a separate residence; and

(c) Who is related to the children served by:

1. Marriage;

2. Blood relationship; or

3. Court decree.

(25) "Social services block grant, (SSBG)" means funding for child care assistance provided by licensed or certified providers for families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents.

(26) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 105-17, Title I Part C, Section 632 or 20 USC 1432.

(27) "Type I licensed child day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) "Type II licensed child day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7) to twelve (12) children, including the provider's own preschool children.

(29) "Unmet need" means a list that may be maintained by the cabinet or designee staff once funds are obligated in a contract area. The list is based on the availability of allocated day care funds in each area.

(30) "Unregulated provider" means a child care provider who is not subject to be licensed or certified by the state or federal government.

(31) "Without regard to income" means that SSBG or CCDF child day care services for child protective cases may be provided or purchased without regard to family income.

Section 2. Technical Eligibility for CCDF. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of nineteen (19) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;

2. A licensed or certified psychologist;

3. A qualified mental health professional as defined in KRS 202A.011; or

4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) 133 percent of poverty at the time of application; or

(b) 150 percent of poverty at the time of reauthorization;

(c) To the extent necessary, the eligibility requirement relating to the percent of poverty may be increased based on the availability of state and federal funds.

(d) Except a child protective services case is eligible without regard to income.

(3) Resides with parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment.

(a) The family remains eligible for child care assistance for a period of twelve (12) consecutive months from the date of discontinuance from K-TAP and the family's income does not exceed eighty-five (85) percent of state median income; and

(b) The family shall be responsible for the maximum copayment amount specified in the child care daily parent copayment schedule.

(4) Resides with parents or K-TAP specified relative who are working, participating in K-TAP, are teen parents in education, or in need of protection. A K-TAP family shall comply with eligibility and limitations pursuant to 904 KAR 2:017, Kentucky Works supportive services.

(5) Resides with parents or specified relative who are non-K-TAP adults in a postsecondary education program, such as vocational school or college, if the family income meets the guidelines listed in subsection (2)(a) of this section.

(6) Copayment requirement.

(a) A family receiving child day care assistance shall be required to contribute toward the payment based on the family's income as described in Section 6(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying the required copayments may, subject to notices and hearing requirements, lose eligibility for the period of time back copayments are owed, unless satisfactory arrangements are made to make full payment.

(c) In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

(7) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;

2. National origin;

3. Ethnic background;

4. Sex;

5. Religious affiliation; or

6. Disability.

(b) Limit parental rights as governed by Section 5 or 6(4) of this administrative regulation.

(8) Families shall not be eligible for child care assistance if care is provided by:

(a) Parents or stepparents;

(b) Legal guardians;

(c) Members of the K-TAP or food stamp assistance unit or persons living in a home, which includes the child in need of care;

(d) Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) Alternative programs such as Head Start, state preschool and kindergarten which are available and accessible for the hours child care is needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The Department for Community Based Services case record shall:

(a) Substantiate child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(c) Provide case-by-case documentation if the copayment is

waived.

(3) Working parents may be eligible if:

- (a) Child care needs exist in order to allow the parent to work;
- (b) The family is income eligible as specified in Section 2(2) of this administrative regulation; and
- (c) CCDF funds are obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program (FSETP).

(1) A dependent individual of a FSETP participant shall be eligible for services if he:

- (a) Is under the age of thirteen (13); or
- (b) Regardless of his age, is physically or mentally incapable of caring for himself as verified by the written determination of:

- 1. A physician;
- 2. A licensed or certified psychologist;
- 3. A qualified mental health professional as defined in KRS 202A.011;
- 4. A Department for Community Based Services worker indicating that the dependent qualifies as a special needs child;
- 5. A collateral agency (schools, comprehensive care center); or
- (c) Is disabled pursuant to 904 KAR 3:010, Section 1(9); or
- (d) Is under court supervision; and
- (e) Resides with an adult household member who:
 - 1. Is responsible for his care; and
 - 2. Is subject to and complying with FSETP, pursuant to 904 KAR 3:042.

(2) Families shall not be eligible for FSETP child care assistance if child care is provided by:

- (a) A member of the food stamp household;
- (b) A food stamp household member who has been exempted from participation in FSETP because he is responsible for the care of a household member who is under six (6) years of age; or
- (c) The food stamp household resides in a Kentucky Domestic Violence Center (KDVC) shelter and child care is provided onsite; or
- (d) The FSETP participant is a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless alternative programs such as Head Start, state preschool and kindergarten are available and accessible for the hours care is needed, a parent of an eligible child who receives or is offered child care services subject to the availability of state and federal funds shall be offered a choice:

- (a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or
- (b) To receive a child care certificate, the DSS-76, Child Day Care Services Agreement and Child Care Certificate, which shall:
 - 1. Be issued to the parent;
 - 2. Be of value commensurate with the value of child care services provided in Section 5(1)(b) of this administrative regulation;
 - 3. If chosen by the parent, be used for child care services provided by a sectarian or nonsectarian organization or agency;
 - 4. Not be considered a contract or grant to the provider but assistance to the parent;
 - 5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
 - a. Licensed child care providers;
 - b. Certified family child care providers (CFCCP); and
 - c. Unregulated child care providers enrolled with the Department for Community Based Services; or
 - d. Relative providers as defined in Section 1 of this administrative regulation; and
 - 6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Community Based Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet or designee shall:

- (a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet or designee shall make available through brochures, handouts, and information shared by the service delivery agents, to the parents and general public, consumer education about parental options relating to child care services including:

- (a) The full range of child care providers available;
- (b) Licensing and regulatory requirements;
- (c) Information and criteria regarding the TANF exception for a single custodial parent who has demonstrated inability to obtain needed child care services for a child under six (6) years of age and information regarding the counting of time exempted toward the time limit on federal benefits; and
- (d) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDF, SSBG, FSETP and other local, state, federal funds under the child day care assistance program:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120; and

(b) With the exception of these providers who are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120 and are not relative providers. They shall be enrolled with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Selfassessment, and meet the following requirements:

- 1. The provider shall be at least eighteen (18) years of age;
- 2. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
- 3. The provider shall submit to a criminal records check conducted within the past year by the Kentucky State Police;
- 4. The provider shall not be found by the cabinet or court to have abused or neglected an adult or child.
- 5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care; and
- 6. The provider shall complete the enrollment process every three (3) years.

7. The provider shall have at least one (1) telephone in working order.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Community Based Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Quality Assurance Section of the Office of Performance Enhancement, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, a hearing officer shall be appointed to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2),(3).

(g) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

(a) These charts represent the local maximum payment rate on a per-day basis. Chart abbreviations are as follows: FD -full day, five (5) or more hours; PD - part day, less than five (5) hours.

KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES

West/East Region

Counties: Allen, Ballard, Barren, Bath, Bell, Boyd, Bracken, Breckinridge, Breathitt, Butler, Caldwell, Calloway, Carlisle, Carter, Christian, Clay, Crittenden, Daviess, Edmonson, Elliott, Fleming, Floyd, Fulton, Grayson, Graves, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Larue, Laurel, Lee, Leslie, Letcher, Lewis, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Simpson, Todd, Trigg, Union, Warren, Washington, Webster, Whitley, and Wolfe

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$13	8	12	7	9	5

Preschool	\$13	8	13	8	9	5
School Age	\$13	8	12	7	9	5

Central Region

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School Age	\$14	8	15	9	10	5

(b) Licensed or certified providers, if the same amount is charged to the general public, may receive one (1) dollar per day beyond the maximum rate if the provider:

1. Is accredited by the National Association for the Education for Young Children or National Association for Family Child Care;
2. Provides child care to a child with special needs; or
3. Provides nontraditional hour care to a child during the period 6 p.m. to 6:30 a.m. or Friday 6 p.m. through Monday 6 a.m.

(3) The cabinet or designee shall determine a copayment which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE							
Income Range Monthly	Family Size 2 Family Copay	Family Size 3 Family Copay		Family Size 4 Family Copay		Family Size 5 or More Family Copay	
		With 1 Child	With 2 or More	With 1 Child	With 2 or More	With 1 Child	With 2 or More
0-399	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
400-499	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
500-599	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
600-699	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
700-799	\$ 1.75	\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800-899	\$ 2.00	\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900-999	\$ 2.50	\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000-1,099	\$ 3.25	\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100-1,199	\$ 4.25	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200-1,299	\$ 5.25	\$5.00	\$5.50	\$4.00	\$4.50	\$3.00	\$3.50
1,300-1,399	\$ 5.25	\$6.00	\$6.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400-1,499	\$ 6.00	\$7.00	\$7.50	\$6.00	\$6.75	\$4.25	\$4.75
1,500-1,599	\$ 6.75	\$7.75	\$8.50	\$7.00	\$7.75	\$5.00	\$5.75
1,600-1,699	\$ 7.50	\$7.75	\$8.50	\$8.00	\$8.75	\$6.00	\$6.75
1,700-1,799	\$ 8.00	\$7.75	\$8.50	\$8.50	\$9.25	\$7.00	\$8.00
1,800-1,899	\$ 8.25	\$8.25	\$9.00	\$9.25	\$10.25	\$8.00	\$8.75
1,900-1,999	\$ 8.75	\$8.75	\$9.75	\$9.25	\$10.25	\$9.00	\$10.00
2,000-2,099	\$ 9.25	\$9.25	\$10.25	\$9.25	\$10.25	\$9.75	\$10.75
2,100-2,199	\$ 9.75	\$9.75	\$10.75	\$9.75	\$10.75	\$10.75	\$11.75
2,200-2,299		\$10.25	\$11.25	\$10.25	\$11.25	\$10.75	\$11.75
2,300-2,399		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75
2,400-2,499		\$11.00	\$12.25	\$11.00	\$12.25	\$10.75	\$11.75
2,500-2,599		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75
2,600-2,699		\$12.00	\$13.25	\$12.00	\$13.25	\$12.00	\$13.25
2,700-2,799		\$-	\$-	\$12.50	\$13.75	\$12.50	\$13.75
2,800-2,899				\$13.00	\$14.25	\$13.00	\$14.25
2,900-2,999				\$13.25	\$14.75	\$13.25	\$14.75
3,000-3,099				\$13.75	\$15.25	\$13.75	\$15.25
3,100-3,199				\$14.00	\$15.50	\$14.00	\$15.50
3,200-3,299				\$-	\$-	\$14.00	\$16.00
3,300-3,399						\$14.00	\$16.00
3,400-3,499						\$14.00	\$16.00

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

3,500-3,599						\$14.00	\$16.00
3,600 and Above						\$14.00	\$16.00
						\$-	\$-

There is no copay below \$700.

Low income working parent family is no longer eligible above 150 percent of poverty.

Families transitioning from TANF/K-TAP have one (1) year of eligibility if income is below eighty five (85) percent of state median income, may remain as low income working parent if income is less than 150 percent of poverty.

The maximum copay for eligible families with more than five (5) members is fourteen (14) dollars with one (1) child in care and sixteen (16) dollars with two (2) or more children in care.

(a) Copayments shall not be assessed in:

1. A K-TAP, medical assistance case where clients are receiving dependent care disregard; or

2. A food stamp or FSETP case.

(b) Copayments in child protective service cases:

1. Copayments may be waived in a child protective service case under SSBG or CCDF.

2. If the copayment is not waived, it shall be calculated at the maximum amount indicated, taking into consideration the family income, size, and number of children in care.

3. The family is eligible for services without regard to income.

(c) The cabinet or designee shall determine the maximum daily reimbursement rate and parent copayment, not to exceed rates as specified in subsection (2) of this section. If the parent fails to pay the copayment, the cabinet or designee shall develop a plan with the parent to pay the copayment.

(d) The cabinet or designee shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every twelve (12) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Families and Children may, except for protective service cases and FSETP cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Teen parents;

(c) K-TAP participants to meet the needs of families who are attempting to transition off assistance;

(d) Parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment; and

(e) Other low income working parents.

(5) Recoupment.

(d) The following provisions apply to overpayment in SSBG, CCDF, FSETP and any other local, state, or federal funds available through the child day care assistance program. Recoup an overpayment in each of the following cases:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider if due to provider error or fraud.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(6) If a client's child care services are reduced or terminated due to need, income criteria, priority status, or change in law, administrative regulation or policy of the cabinet, the cabinet or designee shall:

(a) Reassess the family so a client may be given a minimum ten (10) days notice of their eligibility if they do not meet the new criteria after their authorization period expires; and

(b) Send written notice explaining new eligibility criteria with a notice of intended action.

(7) The cabinet or designee shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that child care services shall not be continued through the appeal process.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Child Day Care Services Agreement and Child Care Certificate", DSS-76, "October, 1997", Cabinet for Families and Children;

(b) "Child Care Billing Statement, Enrollment/Attendance Verification", DSS-77, "February, 1998", Cabinet for Families and Children;

(c) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, "February, 1998", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "February, 1998", Cabinet for Families and Children;

(e) "Child Care Provider Enrollment Self Assessment", DSS-1296, "February, 1998", Cabinet for Families and Children; and

(f) "Application for Subsidized Child Day Care Assistance", "October, 1997", Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, CHR Building, 3rd Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS

Agency Contact : Cathy G. Mobley

(1) Type and number of entities affected: The type and number of entities affected are approximately 40,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by 634 certified, 1878 licensed and 2600 enrolled or relative child care providers. The cabinet or designee will be responsible for the delivery of direct child care services as specified in the approved Child Care and Development Fund Services State Plan which with SSBG has available \$64.3M for SFY'97 and \$75M for SFY'98. This plan allows for the delivery of subsidized child care assistance by a contractor which may improve the delivery of services for both clients and child care providers, expand community resources and increase the number of eligible children served.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. With the passage of the welfare reform bill, the cabinet has the flexibility to design a service delivery

system for the provision of child day care assistance to eligible families. This revised system combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. This improved service delivery system may encourage the development of needed child day care providers as it may equate to an increase in revenue for these providers, though an exact amount of increase is not able to be calculated at this time. The improved service delivery system may also assist local K-TAP recipients and other low income families in obtaining child day care assistance in order to work. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. Additional savings will be available for the families as there will be no copay requirements for families below an income of \$700 per month and there are some internal adjustments to the copay scale for these families.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. The impact of doing business in the geographical areas will be enhanced with the development of this revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The compliance, reporting and paperwork requirement for the first year include the installation of the new child day care assistance automated system to meet expanded federal and state information needs and efficiently serve nearly double the number of children, required training of contractor staff, local providers of subsidized child day care, and the compiling of the required federal reporting data necessary to comply with the CCDF State Plan. These first year requirements will be the responsibility of the local contractor upon designation and the contractors ability to assume authority for the full implementation of the local child day care assistance program.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include operation of the revised child day care assistance program with appropriate monitoring of funds, potential use of other community resources and the reporting of required data for the completion of federal reports mandated pursuant to the CCDF State Plan.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: The first year direct and indirect costs to the agency include the cost of the revised child day care automated system, (\$3.8M) cost of contracting with a local agent to implement the program, (\$3.5M) development and issuance of revised policy and procedures for cabinet staff, necessary training for contractors and providers as each contract area is phased in until the program is statewide. Staff currently providing child care services for the cabinet will be phased into other direct service positions as each contract area becomes operational. The General Assembly allocated \$900,000 for each year of the biennium in order for the cabinet to eliminate copays for families with income below \$700 per month. Also extending the eligibility from 133% to 150% of poverty at reauthorization is expected to cost an additional \$1.6 million in FY'99. Internal adjustments to the copay scale

to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the Cabinet has identified for use to extend the eligibility from 133% to 150%. Additionally in order to serve more families, the following payment policies have been developed: Payments shall be made on an enrollment basis, with the Cabinet or designee enrolling children only for the amount of child care needed. Payments shall only be made for part-time arrangements for those needing only part-time care unless part time is not available. No payment for private kindergarten unless public kindergarten hours do not permit the parent to work or participate in K-TAP. Families are not eligible for subsidies when alternative programs are available and accessible, e.g. Head Start, state preschool, PACE. Families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. We do not have current data on the number of families in this category, but in March 1997, only 6% of the families served were over 150% of poverty. We estimate that families in transition with income at or below 85% of the state median represent less than 3% of the families currently served.

2. Continuing costs or savings: Continuing costs to the agency will include ongoing contract costs (\$4.2M), monitoring of the contract and statewide child day care expenses for compliance with federal regulations, licensure, certification and enrollment of child day care providers and maintenance of the CCDF State Plan and necessary updates (\$4.0M). The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. The second year cost for extending the eligibility from 133% to 150% of poverty is estimated at \$1.66 million for FY 2000. Internal adjustments to the copay scale to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the cabinet has identified for use to extend the eligibility from 133% to 150%. The payment policies identified in the first year will continue to allow the cabinet to serve more families with the limited funds available.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include how effective the local contractor is in integrating the fiscal and human resources of the local communities with state revenue, increases or decreases in the need for child day care assistance for child protection cases, to meet K-TAP participation rates or increases or decreases in the need of low income working parents for subsidized child day care assistance. The cabinet has the flexibility with this regulation to expand the eligibility threshold to remain within the allocated funds for child day care assistance. Another factor that may increase or decrease the costs is the impact of recent minimum wage increases on the cost of the provision of child day care.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements include the development of contracts, monitoring of child day care expenditures, provision of technical assistance to the local contractors, and establish the policies, regulations and state plan for the child day care assistance programs.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state and local revenues is that local contractors may be more effective in integrating the fiscal and human resources of the local communities with the state resources thereby expanding the number of families receiving assistance with meeting their child care needs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Fund, amended with the new welfare reform legislation, Social Services Block Grant and Food Stamp Employment and Training Programs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: A regulation has been filed and a public hearing has been scheduled during which comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet in its effort to meet the increasing demand

for child day care services considered numerous alternative methods for the provision of child day care services including retaining the current operating structure all of which were restricting to the cabinet's goal of universal accessible child day care. The goal of universal access is to ensure a simplified system whereby all families in Kentucky are able to secure child care that is easily accessible, affordable and of such quality that all parents are able to work and participate in K-TAP without distraction. This system consists of a broad array of resources, including public and private programs and funding streams and assist all parents. Subsidies from the cabinet are available to low income families and to protection cases while the contractor develops strategies to expand community participation and increase private investments in child day care.

(8) Assessment of expected benefits: Anticipated benefits of this administrative regulation are the development of a revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. Expected benefits for the enrollment process are that unregulated providers will become enrolled and be eligible for subsidies under the CCDF. Additional savings will be available for the families as there will be no copay requirements for families below an income of \$700 per month and there are some internal adjustments to the copay scale for these families. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training. Additionally the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDF as amended by the new welfare reform legislation.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the child day care assistance program pursuant to these administrative regulations.

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq. and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state has combined six existing child day care programs into one, implemented a simplified child care maximum rate structure, a revised sliding copayment scale on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, provides that families whose K-TAP case has been discontinued and needs child care assistance in order to accept or retain employment shall be eligible for twelve consecutive months from the date of K-TAP discontinuance as long as the families income does not exceed 85% of the state median income and established an enrollment process in order for unregulated providers to become eligible to receive payments under the Child Care Development Fund Block Grant as amended by PL 104-193.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. Additionally the statute required that 70% of the CCDF be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with PL 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will provide minimum health and safety requirements for providers of child care that are not required by statute to be licensed or certified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(New Administrative Regulation)**

907 KAR 1:563. Medicaid covered services hearings and appeals.

RELATES TO: KRS Chapter 13B, 194.025, 205.231, 205.237, 42 CFR 483.12, 431 Subpart E, 483 Subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 GA HB 132, 406

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. 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 the Medicaid covered services hearing and appeal process for applicants and recipients.

Section 1. Definitions. (1) "Applicant" means an individual who has applied for covered services.

(2) "Authorized representative" means an individual or guardian acting on behalf of a recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(5) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral healthcare organization.

(6) "Peer review organization" means a federally designated organization that is performing the utilization review functions for the department.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

(7) "Recipient" means an individual who receives Medicaid.

(8) "Secretary" means the Secretary of the Cabinet for Health Services.

(9) "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Hearing Rights. (1) An applicant, recipient or guardian shall be informed of his right to a cabinet level administrative hearing in writing if an adverse action is taken affecting covered services.

(2) An applicant, recipient or guardian shall be informed of the method by which he may obtain a hearing and that he may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) Other spokesperson;
- (e) Authorized representative; or
- (f) Himself.

(3) The notice shall contain a statement of:

- (a) The Medicaid adverse action;
- (b) The reason for the action;

(c) The specific administrative regulation that supports the action; and

(d) An explanation of the circumstances under which payment for services is continued when a hearing is requested timely in accordance with Section 5 of this administrative regulation.

Section 3. Notification Process. (1) Adverse notices shall be mailed to an applicant or a recipient using the United States Postal Service.

(2) Adverse notices to an applicant, recipient and responsible party covered under Section 5(1) of this administrative regulation shall be sent using a return receipt requested format.

Section 4. Request for a Hearing. (1) An applicant, recipient or an authorized representative may request a hearing by filing a written request with the department.

(2) If an applicant, recipient or authorized representative requests a hearing it shall:

(a) Be in writing and clearly specify the reason for the request;

(b) Indicate the date of service or type of service for which payments may be denied; and

(c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:

1. Discontinuance of services;

2. Adverse determination made with regard to the PASRR requirements of 42 USC 1396f(e); or

3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1) If the request for a cabinet level administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial specified on the notice for denial of level of care, Medicaid vendor payments for nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, and home- and community-based waivers services shall continue until the date the final cabinet level hearing decision order is rendered in accordance with Section 9 of this administrative regulation.

(2) Subsection (1) of this section shall not apply to any Medicaid Program service not stated in subsection (1) of this section.

(3) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(4) Time-limited benefits shall not be extended based on a request for a hearing.

(5) If the request for a cabinet level administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, Medicaid vendor payments for nursing facility services shall continue until the date the cabinet level administrative hearing decision is rendered.

Section 6. Notice of Scheduled Hearing. (1) The scheduled

hearing notice shall contain:

(a) The date, time and place of the scheduled hearing; and

(b) A statement that the local Department for Social Insurance office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) A cabinet level administrative hearing shall be conducted within thirty (30) days of the date of the request for a hearing and a decision shall be issued within thirty (30) days of the hearing date, except that a hearing decision regarding vendor payments to the following shall be issued within fifteen (15) days:

(a) Nursing facilities;

(b) Intermediate care facility for the mentally retarded and developmentally disabled; and

(c) Community based waiver services.

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of his claim.

(4) If the hearing involves medical issues:

(a) A medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review;

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be set forth in writing.

Section 7. Conduct of a Hearing. (1) The cabinet level administrative hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The cabinet level hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The cabinet level administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) The hearing officer shall offer to transmit the hearing decision by electronic format.

(5) If necessary to receive full information on the issue, the administrative hearing officer may examine each party who appears and his witnesses.

(6) The administrative hearing officer may reopen the hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Withdrawal or Abandonment of Request. (1) The recipient or authorized representative:

(a) May withdraw the appeal for a hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request. A hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the hearing.

Section 9. The Cabinet Level Decision. (1) After the hearing is concluded, the hearing officer shall issue a recommended decision.

(2) Exceptions shall be filed with the cabinet within fifteen (15) days from the recommended decision.

(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.

(4) A copy of the recommended decision and a copy of the final order shall be mailed to the recipient and his representative.

(5) If requested during the hearing, a copy of the recommended decision and the final order shall be electronically transmitted on the dates the recommended decision is rendered and the date the final order is rendered to a site specified by the applicant or recipient.

Section 10. Appeal of Cabinet Level Hearing Decision. (1) The final order, with respect to the issue considered, shall be final regarding continuation of vendor payments.

(2) Further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the decision in accordance with KRS 13B.140 and 13B.150.

(3) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1) of this administrative regulation.

Section 11. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to remain in or continue to receive services from a nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or community-based waiver services, vendor payments shall be authorized to reimburse the provider for services rendered during the circuit court appeal process.

Section 12. Special Procedures Relating to A Managed Care Participant. (1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral healthcare organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the decision of the partnership or the managed behavioral healthcare organization is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral healthcare organization or its subcontracted provider to the department in accordance with Section 3 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral healthcare organization plan.

(3) A cabinet level appeal shall be processed as established in Sections 3, 4, 6, 7, 8, and 9 of this administrative regulation.

Section 13. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 14. A hearing or an appeal relating to a decision to reclassify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.

Section 15. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

DENNIS BOYD, Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: August 14, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to com-

ment 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in nursing facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: This regulation removes the reconsideration step provided by the PRO and thus the savings from not performing reconsiderations should offset any additional administrative costs related to cabinet level administrative hearings.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that Medicaid recipients throughout the state have continued and uninterrupted care until a hearing decision is rendered.

(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, and welfare of Medicaid recipients.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: HB 406 of the 1998 GA mandates that the agency provide for uninterrupted Medicaid benefits until a hearing decision has been rendered.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of

the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

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. None
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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: Budget Neutral.

CABINET FOR HEALTH SERVICES

Department for Mental Health/Mental Retardation Services (New Administrative Regulation)

908 KAR 2:210. Domestic violence offender treatment certification standards.

RELATES TO: KRS 403.715 to 403.785

STATUTORY AUTHORITY: KRS 403.7505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for Human Resources to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered 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 of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

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 mental health professional that has been licensed or certified pursuant to KRS Chapters 309, 311, 314, 319, or 335 that has been certified by the cabinet for un-

supervised 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 403, and who has been admitted to a program.

(6) "Court-ordered," means an order by any district, family or circuit court judge for an offender to be assessed by a provider to determine the offender's eligibility for admission to a program.

(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) An applicant that requests certification as an autonomous provider meets all the requirements specified in Section 4 of this administrative regulation except those in subsection (2)(a), (b) or (c) of this section 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; and

(c) If a certification has been denied or revoked in accordance with Section 3 of this administrative regulation, evidence that the individual has remedied the cause for the revocation.

(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 shall 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 can not 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 unless his certification has been revoked in accordance with Section 3 of this administrative regulation.

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 or pled guilty to a criminal offense including misdemeanors if the crime is against persons; or

(b) Has had a domestic violence protective order issued against him within the previous two (2) years; or

(c) Has an alcohol or other drug abuse problem as defined in KRS 222.005; or

(d) Has had a sanction applied 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.

(4) An applicant or provider who has had his certification revoked shall be ineligible for certification or recertification until the second anniversary of the date his certificate was revoked.

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. Clinical profiling of domestic violence offenders;
3. Risk assessment and lethality of domestic violence offenders;
4. Treatment of offenders;
5. Effective services for victims and child witnesses of domestic violence;

6. Safety planning for victims; and

7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that may include general clinical experience and direct-case experience related to domestic violence;

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation; and

(e) Written recommendations for certification from representatives of two (2) victims advocate agencies.

(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) Have contact with the victims of offenders who are clients of the program.

(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 including case discussion, review of reading assignments, skill building, and review of audio or video tapes of actual clinical practice provided by the associate 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 supervisees' practice in person or through video or audio tapes of the supervisees' clinical practice; and

(c) Assure that supervisees provide services in accordance with 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 services 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 give each offender or client a written document that explains the complaint process of the program.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(8) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

Section 7. Contact with Victims. (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; and

(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 this subsection;

(g) A description of the services that will be provided including requirements for participation; and

(h) Notification that, at the discretion of the court, failure to comply with program requirements may result in a citation for contempt of court; and

(i) An explanation of procedures for victim participation in screening, admission and treatment services.

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 cooccurring disorders such as mental illness or substance abuse or dependence;

(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 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) 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.

(3) 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 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 REHM WACHTEL, Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 6, 1998

FILED WITH LRC: August 10, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Monday, September 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 Monday, September 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: This regulation will affect the fifty-nine (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.

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

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 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 require less education training and experience than that required for certification 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

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
MINUTES OF AUGUST 4, 1998

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 4, 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 July 14, 1998 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Nick Kafoglis; Dick Roeding; Representatives James Bruce, Jimmy Lee, and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia; Robert Ayrui; Dana Mayton.

Guests: Representative Hubert Collins; Danny Shearer, Andy Crocker; Finance and Administration Cabinet; Roy A. Massey; Bruce Williams; Natural Resources and Environmental Protection Cabinet; Nelson White, Sandy Davis, Charles Harmon, Jeff Mosley, Jim Roberts, Transportation Cabinet; Rita Osborne, Education Professional Standards Board; G. Dewey Yeatts, Thomas Denton, John P. Rall, Murray State University; Lois Carey, Bruce Crump, Department of Vocational Rehabilitation; Ann Gordon, Robert Nelson, Thelma Cornett, D.W. Swain, Jenny Mitchell, Ralph Von Derau, Eric Friedlander, Cabinets for Health Services and Families and Children; Eddie Mattingly, Lee Searcy, Revenue Cabinet; Marian Hayden, Cull & Hayden; Arnold Thurman; Barbara Winsper, David Newman, KMA/KBA; Bart Baldwin, Children's Alliance; Laurie Berry, Nancy Berry; Kathi Marshall, Alliance for Managed Care and PacifiCare; John Brazel, Kentucky Chamber of Commerce; Larry Maggard, AIK; Donna G. Brown, Ruby Jo Cummins, Kay Stevens, KAHCF; Ted Bradshaw, IIAK.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Transportation Cabinet: Department of Vehicle Regulation: Division of Driver Licensing: Department of Administrative Services: Administration

601 KAR 2:020 & E. Drivers' privacy protection. Sandy Davis, Staff Assistant, represented the Cabinet.

In response to questions by Senator Kafoglis, Ms. Davis stated that: (1) the issue of selling the information depended on a determination of what items were included in the open records requirements; (2) the Regulatory Impact Analysis: (a) did not indicate how much money Kentucky would receive from selling the names; and (b) indicated the amount of money Kentucky would lose by not selling some of the names; and (4) when she received the information, she would let Senator Kafoglis know the amount.

In response to questions by Senator Roeding, Ms. Davis stated that: (1) because she was not familiar with the use of the phrase "nonexempt public records", used in this administrative regulation, she could not state what the phrase meant; (2) the fee for selling the information was established by statute; (3) this administrative regulation: (a) did not permit the sale or release of personal information to everyone; (b) permitted the sale or release to individuals who met the requirements established by federal law in the National Drivers' Privacy Protection Act; and (c) was consistent with the federal requirements; (4) under the Driver Licensing Computer Information System, Kentucky: (a) adopted all but one of the reasons that allowed the sale of drivers licensing information; and (b) did not allow the sale of the information for mass marketing purposes, because that information could be too personalized; and (5) Section 6 of this administrative regulation: (a) permitted a person to file a form requesting to withhold personal information; (b) required each county clerk's office to prominently display information and copies of the required form for withholding personal information; and (c) required a county clerk to include a notice and copy of the required form in the package it mailed to motorists who renewed their registration by mail.

Subcommittee staff stated that: (1) the initial staff review: (a) included the language Senator Roeding referenced regarding non-exempt public records; and (b) KRS 61.874 required public agencies to make nonexempt public records available for commercial or non-commercial purposes; (2) KRS 61.874 provided statutory authority for the promulgation of this administrative regulation; and (3) the requirements relating to county clerks and the notice to withhold personal information were established in Section 6(2) and (3) of this administrative regulation.

Representative Lee stated that: (1) he congratulated Ms. Davis on her upcoming retirement from the Transportation Cabinet; (2) it had been a pleasure for him to have worked with her on transportation issues; (3) she had done a good job; and (4) he wished her well in her retirement.

In response to questions by Representative Allen, Ms. Davis stated that: (1) the Automated Vehicle Information System (AVIS) was: (a) frequently purchased by persons for mass mailing purposes; and (b) used, for example, by Toyota to market everyone who owned a Toyota; (2) the name of a person who submitted the required form would be released from the list for mass marketing purposes; and (3) a request for exclusion, rather than an agreement to be included, was required because the federal National Drivers' Privacy Protection Act mandated that the opt-out form, rather than the opt-in form, be used.

In response to questions by Representative Bruce, Ms. Davis stated that a separate form had to be completed for each vehicle owned by an individual, because each vehicle might be registered differently.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 3(8) was amended to correct an internal cross-reference; and (4) Sections 4(1) and 8(1) were amended to correct the name and edition date of the material incorporated by reference.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:061. Repeal of 781 KAR 1:060. Lois Carey and Bruce Crump, Deputy Commissioner, represented the Department.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 1 was amended to specify the title of the administrative regulation being repealed.

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. Robert L. Nelson, Manager, Local Personnel Branch, represented the Department.

This administrative regulation was amended as follows: (1) the TITLE was amended, pursuant to KRS 13A.222(4), to clearly indicate that the definitions were applicable to 902 KAR Chapter 8; (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(23) was amended, pursuant to KRS 13A.222(4), to accurately reflect the definition of "excessive absenteeism"; (4) Section 1(26) was amended, pursuant to KRS 13A.222(4), to clearly provide that an employee would not be insubordinate if a failure to perform was based upon an interpretation problem; (5) Sections 1(27) and 1(35) were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS

13A.222(4); and (6) Sections 1(23), 1(26), and 1(41) were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky. 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(3) was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky. This administrative regulation was amended as follows: (1) Sections 1 and 5 were amended to comply with the formatting requirements of KRS 13A.220(4); and (2) Sections 1, 2, 3, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments. 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 11(3) was amended to delete language regarding forfeiture of accrued annual leave, pursuant to KRS 13A.120(2)(h), because the provision exceeded statutory authority; (3) Sections 8 and 13 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 2, 6, 8, 9, 10, 11, and 12 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. Section 1(2) was amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:100. Disciplinary procedures applicable for local health department employees. 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 1(2) was amended, pursuant to KRS 13A.222(4), to delete repetition of employee actions warranting disciplinary action; (3) Section 1(2)(v) was amended, pursuant to KRS 13A.120(2), to delete the requirement of disciplinary action for an employee who failed to report illegal activity by a co-worker; (4) Section 4(2)(c) was amended to: (a) delete a provision that banned possession of a weapon by an employee, because this provision did not comply with statutory authority; and (b) substitute a provision banning concealed weapons in a health department, in accordance with KRS 237.115(1); (5) Section 4(4) was amended, pursuant to KRS 13A.222(4), to clarify that a request for appeal shall be: (a) made in writing; and (b) filed with the appointing authority; (6) Section 5(2) was amended, pursuant to KRS 13A.222(4), to include the time for holding an appeal hearing; (7) Sections 3, 4, and 6 were amended to comply with the formatting requirements of KRS 13A.220(4); and (8) Sections 1, 2, 3, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees. This administrative regulation was amended as follows: (1) Section 1(1) was amended, pursuant to KRS 13A.222(4), to clearly provide that an appeal shall be: (a) filed with the Cabinet; or (b) sent by certified mail; (2) Sections 1, 2, and 3 were amended to comply with the format requirements of KRS 13A.220(4); and (3) Section 1(5) was amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:120. Leave provisions applicable to employees of local health departments. In response to questions by Senator Roeding, Mr. Nelson stated that: (1) there were 3 categories of local health department employees: (a) full-time; (b) part-time 100 hour; and (c) less than 100 hour part-time; (2) a full-time employee had to work a certain number of hours during a pay period to earn annual and sick leave; (3) the Cabinet established 23 work hours as the total necessary to accumulate annual and sick leave by a part-time 100 hour employee; (4) part-time 100 hour employees earned annual leave; and (5) this amendment: (a) made it easier for a part-time employee to earn sick and annual leave; and (b) was necessary to administra-

tively establish the amount of hours that a part-time employee had to work during a pay period to earn annual leave.

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(6)(j) was amended, pursuant to KRS 13A.222(4), to include a Christian Science Practitioner in the list of practitioners verifying absence; and (3) Sections 1, 2, 3, 6, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:130. Participation of local health department employees in political activities. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to list the statutes in numerical order; (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(2) was amended to comply with the format requirements of KRS 13A.220(4); and (4) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department. 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(4) and 2(5) were amended, pursuant to KRS 13A.222(4), to clearly provide that a health officer or health department director receive a: (a) 15% raise; or (b) salary increase to the minimum of the grade assigned; and (3) Section 3(6) was amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Finance and Administration Cabinet: Office of the Secretary: Engineering

200 KAR 7:011. Repeal of 200 KAR 7:010. Andy Crocker, Attorney, represented the Cabinet.

Education Professional Standards Board

704 KAR 20:690. Kentucky Teacher Internship program. Rita Osborne, Director of Testing and Internship, represented the Board.

In response to questions by Senator Roeding, Ms. Osborne stated that: (1) this administrative regulation did not create additional paperwork; (2) she had not heard complaints from people regarding the paperwork requirements for the internship program; (3) the paperwork requirements were established to implement the statute in a quality assurance manner; (4) the internship program had been very positively accepted by the interns; (5) a recent rigorous review of the program by the Board indicated a 95 percent positive response as to the different procedures established for the program; (6) while an intern was required to demonstrate competency in all acts of teaching, not all acts of teaching could be observed directly in a classroom; (7) as a result, this administrative regulation permitted an intern to document items in a portfolio to allow the intern committee to make the required determination regarding the individual's competency in all acts of teaching; and (8) because the General Assembly set aside funds for the internship program, the implementation of this administrative regulation would not have an impact on the budget.

Murray State University: Board of Regents

John Rall, University Attorney; Dr. Dewey Yeatts, Associate Vice President for Facilities Management; and Thomas Denton, Vice President of Administration, represented the University.

Subcommittee staff stated that: (1) Senator Kafoglis had raised a question regarding whether these administrative regulations were exempt from the requirements of KRS Chapter 13A; (2) under KRS 13A.010(2)(e), the boards of institutions of higher education were exempt from the requirements of KRS Chapter 13A, if the administrative regulation related to: (a) students attending, or applicants to, the institutions; or (b) the control and maintenance of land and buildings; (3) the subject matter of these administrative regulations

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

did not fall within these categories; and (4) Murray State University was updating administrative regulations that had been updated by other universities.

In response to a question by Senator Roeding, Mr. Denton stated that: (1) 772 KAR 1:070 permitted the university to organize and operate affiliated corporations; (2) each college or university had organized at least one affiliated corporations, including university and athletic foundations and foundations to receive contributions; and (3) these organizations did not interfere with local businesses.

772 KAR 1:010. Acquisition and disbursement of funds, accounting system – records and annual report.

772 KAR 1:020. Delegation of financial management responsibility.

772 KAR 1:030. Annual audit.

772 KAR 1:040. Purchase – inventories – sales of surplus property – capital construction procedures.

772 KAR 1:050. Issuance of bonds.

772 KAR 1:060. Fund for excellence.

772 KAR 1:070. Affiliated corporations.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the September, 1998 meeting of the Subcommittee:

State Board of Elections: Forms and Procedures

31 KAR 4:120E. Additional precinct officers.

31 KAR 4:130E. Submitting Absentee Ballot Application by facsimile.

Finance and Administration Cabinet: Office of Financial Management and Economic Analysis: Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010E. Formula for allocation of private activity bonds.

Department of Agriculture: Livestock Sanitation

302 KAR 20:040E. Entry into Kentucky.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5.

401 KAR 5:009E. Permits for swine feeding operations.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:110. Roederer Correctional Complex.

Transportation Cabinet: Professional Engineering and Related Services

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

600 KAR 6:060. Professional engineering service selection committee.

600 KAR 6:080. Financial records and audits of firms.

Department of Highways: Mass Transportation

603 KAR 7:080E. Human service transportation delivery.

Education, Arts, and Humanities Cabinet: Kentucky Board of Education: Department of Education: Office of District Support Services: School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

Department for the Blind: Blind

782 KAR 1:030. Scope and nature of services.

782 KAR 1:040. Appeal procedures.

Labor Cabinet: Office of Labor Management Relations and Mediation: Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program.

Public Protection and Regulation Cabinet: Department of Insurance: Health Insurance Contracts

806 KAR 17:141E. Repeal of 806 KAR 17:140.

806 KAR 17:150E. Health benefit plan rate filing requirements.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

Harness Racing

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

Cabinet for Health Services: Department for Public Health: 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 2:018E. Transportation services for Kentucky Works.

904 KAR 2:380E. Child Support Enforcement Program application process.

Department for Social Services: Division of Family Services: Day Care

905 KAR 2:160E. Child day care assistance program.

Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services

907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.

907 KAR 1:011E. Technical eligibility requirements.

907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:026E. Dental 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 1:605E. Medicaid procedures for determining initial and continuing eligibility.

907 KAR 1:626E. Reimbursement of dental services.

907 KAR 1:640E. Income standards for Medicaid.

907 KAR 1:645E. Resource standards for Medicaid.

907 KAR 1:755E. Preadmission screening and resident review (PASRR) program.

Payment and Services

907 KAR 3:065E. Nonemergency medical transportation waiver services and payments.

Department for Mental Health and Mental Retardation Services: Substance Abuse

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.

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

Mental Health

908 KAR 2:210E. Domestic violence offender treatment certification standards.

OTHER BUSINESS:

House Bill 106: Motorcycle Helmet Law

Jim Roberts, Deputy Commissioner, Department of Vehicle Regulation, Transportation Cabinet; Jay Huber, President; Barbara Winsper; and Malcolm Winsper, Kentucky Motorcycle Association, appeared before the Subcommittee.

Mr. Roberts stated that: (1) the Cabinet appreciated the opportunity to discuss the implementation of House Bill 106 with the Subcommittee, specifically issues relating to: (a) forms; (b) proof of insurance; and (c) eligibility of out-of-state residents; (2) the current system worked as follows: (a) an applicant who wanted a decal to be affixed to his motorcycle registration plate was required to: 1. go to the county clerk's office to show proof of health insurance; and 2. pay a fee of \$3 for the decal, once the clerk was satisfied that health insurance coverage existed; (b) the vehicle information system information regarding the applicant would be changed to note that he had provided proof of health insurance; (c) the clerk was required by House Bill 106 to notify the insurer that the: 1. applicant would be permitted to ride without a helmet; and 2. Department of Vehicle Regulation was required to be notified upon termination of coverage; (d) upon notification of termination of coverage, the Department would contact the individual to advise the individual to return to the county clerk's office to: 1. show additional proof of coverage; or 2. return the registration plate with the decal; (e) if the individual failed to return to the clerk's office, the Department would suspend the individual's operator's license; and (f) once the operator's license was suspended, the individual was required to pay a reinstatement fee of \$40; (2) the Department believed that House Bill 106: (a) was clear in its intent and process; and (b) left very little latitude on the Department's part for administrative interpretation; (3) the process appeared to be working, because the county clerks had issued over 3200 decals in the first weeks after July 13 with very little: (a) complaints from citizens; or (b) inquiries to our office; (4) this Subcommittee was interested in whether the Department needed to promulgate an administrative regulation pursuant to House Bill 106 relating to: (a) the use of forms in this process; or (b) any administrative interpretations which might have occurred that fell within the scope of KRS Chapter 13A; (5) while the Department had not created additional forms for the implementation of House Bill 106, the legislation: (a) required the issuance of a decal; and (b) established the fee; (6) the county clerks: (a) had been assisted by the Department in determining what constituted acceptable proof of health insurance; (b) were required to make the final determination on what items constituted acceptable proof of health insurance; and (c) might differ in their interpretations as to what was acceptable proof of health insurance; (7) because KRS 304.5-101 defined health insurance, the promulgation of an administrative regulation that copied the statutory definition or differed from the statute would violate KRS Chapters 304 or 13A or both; (8) House Bill 106: (a) addressed the issuance of a decal to out-of-state resident; and (b) stated that when a person obtained or renewed registration on any motorcycle registered in that person's name, that person was required to provide the proof of health insurance; (9) because a citizen who did not have a Kentucky motorcycle registration would not be appearing in the county clerk's office either to obtain or renew Kentucky registration, a decal could not be issued to that individual; (10) House Bill 106 was in litigation and, if the court issued an opinion which differed from the current process, the Department would need to address those concerns; and (11) the Department: (a) felt that House Bill 106 had been implemented on its own merits without the need for an administrative regulation; (b) hoped it had satisfactorily answered the Subcommittee's questions; and (c) was available to answer additional concerns.

In response to questions by Senator Roeding, Mr. Roberts stated that: (1) the litigation was: (a) based on constitutional questions; and (b) not based on the administrative interpretation of House Bill 106; (2) the Department was implementing House Bill 106 while the litigation was pending because: (a) the temporary restraining order requested by the plaintiffs had been denied; and (b) the Department was required to implement the legislation on its

effective date; and (3) administrative regulations were not required because: (a) House Bill 106 could stand on its own merits without interpretation; and (b) under the parameters established in KRS Chapter 13A for the issuance of administrative regulations, there was not an interpretation that required an administrative regulation for the implementation of House Bill 106.

Senator Roeding stated that: (1) he believed KRS Chapter 13A required the promulgation of an administrative regulation whenever an agency affected someone in Kentucky; (2) because the Department was implementing a law without promulgating an administrative regulation, the Department was: (a) thwarting the intent of KRS Chapter 13A; and (b) taking over the responsibility of the General Assembly; and (3) in implementing KRS Chapter 13A, the General Assembly had stated that administrative regulations were required to implement legislation.

In response to questions by Representative Allen, Mr. Roberts stated that: (1) a person who had parked his motorcycle on a curb of the street was not required to wear a helmet at that time, because House Bill 106 stated that a person shall not operate a motorcycle on a highway in violation of its requirements; (2) whether an officer stopped a person who had parked his motorcycle on the curb was a question of enforcement; (3) he believed that in order to meet the requirement of operation, the motorcycle was required to be on and running on a public highway; and (4) whether an officer stopped a person sitting on a motorcycle that was not running was: (a) an enforcement interpretation; and (b) not an issue that was appropriate for an administrative regulation promulgated by the Department.

Representative Allen stated that House Bill 106 was: (1) supposed to be a simple bill to allow motorcyclists the right to not wear their helmets; and (2) not the simple bill it should have been.

Representative Lee stated that: (1) the Department was required to promulgate administrative regulations concerning House Bill 106 because there were so many issues to flesh out, including the reinstatement fee of \$40; (2) House Bill 106: (a) did not discuss a reinstatement fee; and (b) authorized the Cabinet to promulgate an administrative regulation that would establish a reinstatement fee; (3) administrative regulations were required to establish whether the decal sticker was to be placed on the: (a) helmet; (b) motorcycle; or (c) license plate; (4) he did not see a way to implement House Bill 106 without the promulgation of administrative regulations as required by KRS Chapter 13A because: (a) the Cabinet assumed items were included in the legislation; and (b) not every item was in black and white; (5) if the court ruled that House Bill 106 was unconstitutional, the Cabinet would not need administrative regulations; (6) if the Cabinet was to enforce House Bill 106, administrative regulations were required to flesh out the legislation; and (7) he was not in favor of the Cabinet enforcing and interpreting a statute without the promulgation of administrative regulations that were approved by the Subcommittee.

In response to questions by Representative Lee, Mr. Roberts stated that: (1) the reinstatement fee was established by statute in KRS Chapter 186 under the driver's license section for a suspension; (2) Section 2 of House Bill 106 stated that the decal was to be affixed to the applicant's license plate; and (3) while the Cabinet did not see a need to restate the statutory language regarding the reinstatement fee in an administrative regulation, the Cabinet would take another look at the issues of: (a) the reinstatement fee; and (b) affixing the decal to the license plate.

In response to a question by Representative Bruce, Subcommittee staff stated that: (1) anything that was required to implement a statute that was not completely provided for by the statute was required to be done through an administrative regulation; (2) while House Bill 106 provided for a decal, the agency was required to promulgate an administrative regulation establishing the specific decal that would be required; (3) the decal could be: (a) established in the body of an administrative regulation; or (b) incorporated by reference in an administrative regulation; (4) Subcommittee staff would meet with the Cabinet to determine what other items were needed in an administrative regulation; (5) other issues that needed to be addressed included issues that related to: (a) passengers; and (b) out-of-state drivers; and (6) while an administrative regulation was not required if a statute was complete, House Bill 106 was not complete because it did not specify every matter required to implement it.

Representative Bruce stated that: (1) Subcommittee staff should work with the highway department on the promulgation of the necessary administrative regulations; and (2) he believed Subcommittee staff understood the issues and requirements of KRS Chapter 13A better than the Cabinet did.

Chairman Arnold stated that: (1) he agreed with Representative Allen's statement that this piece of legislation began as a simple bill to give people the right to either wear or not wear a helmet while riding a motorcycle; (2) even though a motorcycle was another form of transportation, just like an automobile, jeep, or truck, the General Assembly: (a) amended a good bill to require motorcyclists to set themselves apart by putting a sticker on their motorcycles to show that they had health insurance; and (b) did not require automobile drivers to show proof of health insurance on their vehicles; (3) because KRS Chapter 13A required the promulgation of an administrative regulation, the Cabinet should promulgate a simple administrative regulation that interpreted House Bill 106 as it was intended; (4) while he thought most bikers, just like most car owners, were law-abiding citizens, he thought this legislation tried to single them out unfairly; and (5) while he chose to wear a helmet when riding his motorcycle, it was the right of each motorcycle rider to choose whether or not to wear a helmet.

Mr. Huber stated that: (1) the main concern of members of the Kentucky Motorcycle Association was the conflicting answers received from the county clerks' offices and various city, county, and state law enforcement agencies; (2) for example, one county clerk told a member that he was required to have \$100,000 worth of insurance, while other county clerks required motorcyclists to purchase their license plates for the next year before issuing the decal; (3) a citation had been issued to one member under the new law because the officer said the member was required to have had his motorcycle license for three years, even though the clerk had not mentioned this requirement when he registered his motorcycle; (4) the state police had issued a memo stating that all out-of-state riders and passengers were required to wear a helmet even though: (a) that was not the legislative intent expressed by House Bill 106: 1. at the last Transportation Committee meeting; and 2. on the House floor; and (b) Representative Geveden had stated that passengers and out-of-state riders would be able to ride without a helmet; (5) two extremely large rallies were recently held in Sturgis and Louisville, attended by between 30,000 and 40,000 people mostly from out-of-state; (6) he had a file folder filled with petitions from people out-of-state that: (a) wanted to come to Kentucky; and (b) would come to Kentucky, if there was not a mandatory helmet law; (7) House Bill 106 was approved by the Tourism Committee; (8) part of the Kentucky Motorcycle Association's lawsuit asked the court to determine that the enforcement of House Bill 106 was stopping interstate commerce and reciprocity in a manner similar to saying that a Kentucky citizen was allowed to drive 85 miles an hour on the highway, while someone from Ohio or Indiana was limited to 65 miles an hour; and (9) he believed the administrative regulations would provide uniformity for law enforcement.

In response to a question by Representative Bruce, Mr. Huber stated that the citation he mentioned had been issued by Officer Hart of the Louisville City Police.

Chairman Arnold stated that: (1) tourism and biking were big issues in Kentucky; (2) the Little Sturgis rally brought in at the gate over \$200,000, which for a community the size of Sturgis with 2,100 people, was a big income; (3) he: (a) was a weekend biker; and (b) used to be a weekend boater and skier; and (4) most people that participated in the biking industry did so: (a) because they like riding their motorcycle; and (b) not because they were gun-toting, knife-packing, pistol-packing mommas.

Senator Roeding stated that: (1) administrative regulations were required to be promulgated because House Bill 106 stated: (a) on page 1, line 18, that the following persons shall be required to wear protective headgear in a manner prescribed by the secretary of the Transportation Cabinet; and (b) on page 3, lines 4, 5, and 6, that the Transportation Cabinet shall develop and the county clerk shall provide to the applicant a decal; (2) while the language required the decal to be affixed to the license plate, the Cabinet was required to promulgate an administrative regulation to develop the decal; and (3) an administrative regulation was necessary if a single citizen in Kentucky was affected by the legislation.

Chairman Arnold stated that: (1) he believed the Cabinet knew the feelings of the Subcommittee; and (2) the Subcommittee would be glad to work with the Cabinet in developing administrative regulations that were: (a) suitable; (b) justifiable; and (c) workable.

Representative Allen stated that even though motorcyclists just wanted to ride their motorcycles at times without a helmet, it took an 8 page bill to accomplish that.

Mr. Roberts stated that the Cabinet: (1) thanked the Subcommittee for the opportunity to discuss the issues; and (2) looked forward to working with the Subcommittee.

House Bill 74: Taxation of Motor Vehicles

Eddie Mattingly, Legislative Liaison, Revenue Cabinet; Lee Searcy, Revenue Cabinet, Motor Vehicle Usage Tax; and Representative Hubert Collins appeared before the Subcommittee.

Mr. Mattingly stated that: (1) Subcommittee staff had requested that the Revenue Cabinet update the Subcommittee on its implementation of House Bill 74; (2) House Bill 74 made a significant change in the way vehicles were valued for the motor vehicle usage tax; (3) prior to House Bill 74, the motor vehicle usage tax was: (a) a percentage of the window sticker, for a new vehicle; and (b) an arbitrary book value for a used vehicle; (4) Representative Collins sponsored legislation during the last two regular sessions to change the motor vehicle usage tax to a tax: (a) based on what a person paid for the vehicle; and (b) thought to be fairer; (5) House Bill 74: (a) was enacted; (b) established an affidavit system to enable a person to pay the tax based on what was paid for the vehicle; and (c) included a fall-back procedure for: 1. calculating the tax when an affidavit stating the purchase price was not available; 2. a new vehicle, as a percentage of the sticker price; and 3. a used vehicle, as the book value; (6) Lee Searcy and he had: (a) traveled across Kentucky the last two months; (b) conducted approximately forty training sessions, 1. one-half with county clerks; and 2. one-half with automobile dealers; and (c) gone over in detail how the new system would work; (7) because House Bill 74 became effective August 1, the Cabinet had people available on Saturday to assist with its implementation; (8) even though the Cabinet had become aware of minor computer changes necessary in the AVIS system, the Cabinet believed the new system: (a) had been implemented smoother than anticipated; and (b) was well understood by the public and the automobile dealers.

Representative Bruce stated that: (1) the Cabinet's brochure titled Kentucky's Taxation of Motor Vehicles for Motor Vehicle Usage Tax indicated that: (a) if he bought a new car without a trade-in, he would pay \$1,200 in tax; and (b) if he bought a new car with a trade-in worth \$8,000, he would pay \$1,800 in tax; and (2) it did not make sense that he would pay more money in taxes if there was a trade-in.

Mr. Mattingly stated that: (1) the brochure: (a) was developed to help educate the public; and (b) included examples; and (2) there was a distinction between new and used vehicles in both the current and the previous law because in Kentucky if you bought a: (a) new vehicle, you did not receive credit for a trade-in; and (b) used vehicle, you did receive credit for a trade-in.

In response to a question by Chairman Arnold, Mr. Searcy stated that the examples in the brochure were based on vehicles that had different values to begin with.

In response to questions by Representative Bruce, Representative Collins stated that: (1) the usage tax would be calculated under whichever method produced the smaller amount; (2) if a purchaser was upside-down, meaning that he owed more on the trade-in vehicle than it was worth, the: (a) dealer: 1. needed to make the finance company or bank happy by not showing a negative balance; and 2. would not be able to show that he was financing an amount greater than the worth of the vehicle; and (b) usage tax would be computed under the previous method of six percent of ninety percent; and (3) because the county clerks understood the new system, a purchaser would be able to ask the county clerks any questions he had.

Representative Bruce stated that the brochure: (1) did not indicate that a purchaser: (a) could choose either system for determining the amount of the usage tax; and (b) would pay the usage tax using the amount that was cheaper; and (2) should be written plain enough for everyone to understand.

Chairman Arnold stated that: (1) the administrative regulation should have been promulgated prior to the publication of the brochure; and (2) he believed House Bill 74 encouraged new car sales without a trade-in because if a person bought a \$22,000 car with an \$8,000 trade-in, he was required to pay tax on \$30,000.

Representative Lee stated that: (1) he agreed with Chairman Arnold's statement that, in order to ensure that the pamphlet was based on the administrative regulation the pamphlet should not have been published before the administrative regulation had been promulgated; (2) since the pamphlet was not clearly understood by everyone, the pamphlet appeared to indicate that: (a) it was a disadvantage to trade-in a vehicle when purchasing a new vehicle; and (b) a purchaser would pay more money in taxes if a trade-in was used in a new vehicle purchase; and (3) while the fall-back provision in House Bill 74 stated that the old method of computing the tax would be used if the new method would cost the purchaser more money, (a) the brochure did not state that alternative; and (b) he hoped the administrative regulation would state that alternative.

Mr. Mattingly stated that the pamphlet was published because: (1) House Bill 74 made a revolutionary change in the manner in which the usage tax was computed; and (2) the Cabinet wanted the public, car dealers, county clerks, and others to be as well-educated and informed as possible when the legislation took effect on August 1.

In response to questions by Subcommittee members, Subcommittee staff stated that: (1) KRS Chapter 13A required the promulgation of an administrative regulation in order to implement a statute; (2) if a Cabinet issued a pamphlet that implemented a statute, or set out a formula or explanation, the Cabinet violated KRS Chapter 13A because the pamphlet was a form of implementation other than an administrative regulation; and (3) while the intent of the Cabinet was good, the administrative regulation should have been issued prior to the publication of the pamphlet.

Mr. Mattingly stated that the Revenue Cabinet: (1) intended to have the administrative regulation in effect on August 1; (2) had developed the administrative regulation, which: (a) is being reviewed by the Cabinet; and (b) will be filed with LRC shortly; and (3) had every intention of complying with KRS Chapter 13A.

Senator Roeding stated that: (1) if he violated the law, he would: (a) be penalized; (b) have to go to jail; and (c) lose his office, if it was a felony; (2) he wanted to know what happened to a Cabinet that violated the law; (3) he encouraged people to follow the law; and (4) he believed that the General Assembly should consider enacting legislation to penalize administrative bodies who violated KRS Chapter 13A because: (a) the agencies should be required to follow the law in a manner similar to citizens; and (b) it would encourage agencies to comply with the provisions of KRS Chapter 13A.

- In response to questions by Senator Roeding, Mr. Mattingly stated that: (1) the county clerks appreciated having the pamphlet available for the public when a citizen asked for an explanation of the new methods of computation; (2) the Cabinet had already distributed the 50,000 pamphlets it had ordered; (3) while Senator Roeding's statements were well-taken, the Cabinet: (a) issued the pamphlet as a means of educating the public; (b) had no intention of violating KRS Chapter 13A; and (c) intended to file an emergency administrative regulation because there was not enough time to complete the process for promulgating an ordinary administrative regulation prior to the August 1 effective date of House Bill 74; and (4) the pamphlet was a better pamphlet than the Subcommittee thought it was because the clerks and the public were happy with its content.

Representative Collins stated that: (1) most people have on occasion accidentally violated the law; (2) he did not think the pamphlet included any statements that would make a person pay more tax on a new vehicle because the either-or alternative existed; and (3) for a used vehicle, there was also a fall-back provision that: (a) applied if a person did not have an affidavit; and (b) required the tax to be calculated based on: 1. the difference between the two book values, if a trade-in was used; or 2. the retail book value if there was not a trade-in.

Representative Bruce stated that the pamphlet should: (1) explain the either-or situation more clearly; and (2) not have been released prior to the promulgation of an administrative regulation.

Mr. Mattingly stated that: (1) while he disagreed with Representative Collins' statement regarding the either-or alternatives, they agreed that ultimately there were two alternatives; (2) the Cabinet believed that for the last twelve years, people wanted an affidavit system based on what was paid for the vehicle; (3) because House Bill 74 required that the vehicle was to be valued based on the affidavit, the alternative method of computing the tax came in to effect only if an affidavit was not available; and (4) it was not a true either-or situation, because the statute: (a) required an affidavit; and (b) established a fall-back situation based on book value only if there was not an affidavit.

In response to questions by Representative Bruce, Mr. Searcy stated that: (1) he wanted to discuss the examples used in the brochure because the examples were based on different vehicles; (2) the first example: (a) was 1. for a new vehicle without a trade-in; and 2. based on a vehicle that sold for \$20,000 with an MSRP of \$23,000; and (b) would have resulted in a higher amount of tax under the old method, because ninety percent of \$23,000 was a higher figure; (3) the second example: (a) showed a total consideration of \$30,000, which was lower than the probable sticker price of \$33,000; (b) based the tax amount on the amount of the total consideration given, including: 1. \$22,000 in cash; and 2. \$8,000 for the trade-in; and (4) the two examples were based on two separate vehicles that had different values.

Representative Collins stated that the brochure would have been clearer if the same vehicle had been used in both examples.

In response to a question by Chairman Arnold, Mr. Searcy stated that if a person bought a vehicle that was worth \$20,000, he: (1) was required to pay: (a) \$20,000 cash; or (b) \$15,000 cash with a \$5,000 trade-in; and (2) would still have to pay tax based on the \$20,000 under either scenario.

In response to questions by Representative Lee, Mr. Searcy stated that if an individual or dealer came to the clerk's office without an affidavit available, the tax would be computed based on the old method of ninety percent.

Representative Lee stated that: (1) over the years, he had seen the Cabinet take a different position than the county clerk's office; (2) for instance, the Cabinet: (a) taxed a conversion van based on what it actually had; and (b) did not tax the van on its book value; and (3) the Cabinet would probably tell a car dealer that he was required to have an affidavit in order to compute the tax under the new method established in House Bill 74.

In response to questions by Representative Lee, Mr. Mattingly stated that he, Representative Collins, and Cabinet attorneys had: (1) discussed the meaning of the term "affidavit not available"; and (2) decided that an affidavit not available meant that the person chose not to give an affidavit, even if the affidavit was in the person's pocket.

Representative Lee stated that because the car dealer included the amount of the tax in the car deal, the car dealer would: (1) compute which method provided the least amount of tax; and (2) not complete an affidavit if the old method of computation provided a lower tax amount.

In response to questions by Representative Allen, Mr. Mattingly stated that: (1) when House Bill 74 was enacted, it was estimated that the Cabinet would lose approximately \$6 million, which would come from the road fund, because of the new method of computation; (2) it was not accurate to state that the tax would be decreased by two dollars a car because: (a) three million vehicles constituted the total vehicle population; and (b) not every vehicle was subject to the usage tax each year; and (3) House Bill 74: (a) definitely was a tax savings for persons who bought new vehicles or new heavy trucks; (b) was a wash for people who bought used vehicles; (c) was perceived by the public as a system of fair taxation.

Representative Collins stated that: (1) the tax paid when a person registered a vehicle was: (a) property tax; and (b) a different tax than the motor vehicle usage tax paid when the vehicle was bought; (2) the amount of tax was changed from the midpoint between the average trade-in and the average retail to the average trade-in; and (3) the amount of savings per vehicle owner depended on the type of car owned, with the owner of a late model car saving more money than an owner of an older car.

Mr. Searcy stated that: (1) the property and motor vehicle usage taxes were two different taxes; (2) the property tax amount had been

reduced about ten percent over the last two years; (3) House Bill 74 codified that reduction to fix the amount at the trade-in value; (4) the biggest complaint received by the Cabinet was from persons who called to complain about being taxed on the \$10,000 book value of a vehicle they bought for \$500; (5) after August 1, that person was able to take an affidavit to the county clerk's office to pay the usage tax based on the \$500 amount paid for the vehicle; and (6) while across the board on all vehicles registered in the state the amount of tax savings came out to very little per vehicle, the savings for some people were significant.

In response to questions by Representative Bruce, Mr. Searcy stated that while a person who traded-in a vehicle for a used vehicle would, by statute, receive trade-in credit, there was not a provision in the statutes that permitted a trade-in credit for new vehicles.

Mr. Mattingly stated that in the purchase of a new vehicle, the trade-in: (1) was treated basically like cash; and (2) went towards the purchase price of the new vehicle.

Mr. Searcy stated that, while there was a provision in the law to grant trade-in credit on used vehicle purchases, there was not a provision in the law to grant trade-in credit on new vehicle purchases.

Mr. Mattingly stated that the Cabinet: (1) knew from its discussions with car dealers and county clerks that the examples were not clear; and (2) planned to revise the pamphlet to clarify the examples.

In response to questions by Senator Roeding, Mr. Mattingly stated that: (1) the current system of taxation in Kentucky was against selling new cars because Kentucky did not allow a trade-in credit for new vehicle purchases that it allowed for used vehicles; and (2) while legislation was proposed that would have allowed a new car trade-in credit, (a) the fiscal impact was an approximate \$40 to \$50 million deduction to the road fund; and (b) the proposal was not approved.

Senator Roeding stated that he wanted: (1) the Cabinet to receive assistance in clarifying the pamphlet and promulgating the administrative regulations from: (a) Representative Collins, (b) KADA; and (c) people in the used car business; and (2) a level playing field for persons buying a new or used vehicle.

Representative Collins stated that while he agreed with Senator Roeding, the objective of many people was to work toward that goal over a period of time.

In response to questions by Representative Bruce, Representative Collins stated that while Kentucky was receiving about \$160 million from the federal government for highways this year, the information was received too late to have factored into the legislative and budget decisions made during the 1998 Regular Session.

Chairman Arnold stated that: (1) administrative bodies should promulgate administrative regulations prior to the: (a) publication of materials required by legislation; and (b) implementation of new legislation; (2) a letter would be sent from the Subcommittee to each agency stating this; and (3) the Subcommittee would also ask the Legislative Research Commission to send a letter.

Report by the Cabinet for Health Services on the Use of Restraints

Ralph von Derau, Health Planner, Office of Inspector General, and Jenny Mitchell, Assistant Director, Division of Licensing and Regulation, appeared before the Subcommittee.

Chairman Arnold stated that at the July 14, 1998, Subcommittee meeting, he had requested a demonstration and explanation on the use of restraints in a nursing facility.

Ms. Mitchell stated that: (1) she would like a volunteer for the demonstration on the use of restraints; and (2) she had asked a provider representative to place the restraints on the volunteer.

Kay Stevens, Director of Nursing Services, Christian Church Homes, was the provider representative. As she explained the use of each type of restraint, she demonstrated its use on the volunteer, Ann Gordon, Cabinet for Health Services.

Ms. Stevens stated that: (1) she was the director of nursing services for Christian Church Homes in Hopkinsville, Christian County; (2) a lap buddy was an apparatus that: (a) was used to: 1. keep wheelchair residents upright in the wheelchair, who would otherwise lean forward because of a medical condition rather than simply from the effects of aging; and 2. support a resident's hands to prevent dependent adema; (b) hooked onto the wheelchair arms; (c) a resident could not normally remove by himself; (d) because it was

made of foam, bent sufficiently for release by pulling on the middle of the device; (e) was dignified because it did not appear the resident was tied; (f) did not involve tying a resident in the wheelchair; and (g) was easily removable in case of an emergency; (3) a soft waist restraint was an apparatus that: (a) was: 1. used in a regular chair; 2. made of soft material; 3. placed around the resident's waist; and 4. tied behind the chair in a quick release, one-pull knot; (b) reminded individuals that they were unable to walk due to: 1. an amputated limb; 2. post-stroke recovery; 3. Alzheimer's; 4. dementia; or 5. other physical impairments that impeded their ability to walk; (c) fit nicely around the resident's waist; (d) never was pulled tight into a double knot; and (e) was safe and easily removable; (4) Posey was the most widely recognized brand name for the other restraints, including a Posey vest restraint which: (a) was used to keep people from leaning forward in a chair; (b) looked like a sleeveless jacket; and (c) were not as widely used today, because there were other less restrictive methods of restraint available; and (5) a halter-type device was also available which held a resident against the back of a chair if the resident was not able to hold up his own body.

In response to questions by Chairman Arnold and Representative Bruce, Ms. Mitchell stated that: (1) most complaints regarding physical restraints were made because a nursing facility would not restrain an individual's loved one with a: (a) Posey vest; (b) seat belt; or (c) bed rail; (2) some, not most, facilities in Kentucky incorrectly have told people that the state did not allow the use of restraints, because that was a quick answer while the employees were rushed; (3) while it was the position of the Cabinet, the Health Care Financing Administration, and nationwide, to allow the appropriate use of restraints, the Cabinet did not prohibit the use of physical restraints; (4) if a family member expressed concerns to the facility staff, the director of nursing, or the assessment team regarding the use of an appropriate restraint on a resident: (a) the family member would be on the team that planned the care of the loved one; (b) the facility was responsible for educating the family regarding the risks and benefits of the use of physical restraints; (c) the team would determine if the use of the requested restraint was appropriate; and (d) if the team determined that the use of a particular physical restraint outweighed the risks involved, the restraint would be used; (5) the amount of time involved in this assessment varied depending on the: (a) circumstances of the resident; and (b) length of time it took to meet with the nursing facility representatives; (6) a provider might turn down the request of a family member to have a loved one placed in a Posey vest in bed with the side rails up if the provider knew that the resident moved a lot in bed because of the risks of: (a) strangulation or (b) being caught between the bed rails; (7) the Cabinet did: (a) not state that a physical restraint could not be used; and (b) state that a physical restraint could be used if: 1. an assessment of the resident assured the resident would be safe; and 2. the restraints were used: a. correctly; and b. based on a medical symptom; (8) the Cabinet had trained thousands of providers; (9) representatives of the Kentucky Healthcare Association were present at the Subcommittee meeting; (10) the last four survey cycles of nursing facilities in Kentucky had indicated that the use of restraints had decreased: (a) from 23.3 percent of residents to 9.3 percent of residents; and (b) below the national average; (11) a resident's doctor: (a) was kept informed by the nurse at the nursing facility; (b) depended on the assessment of the nurse; and (c) might order a Posey vest for a patient after the nurse had told him the patient had fallen, without realizing the fall occurred because the patient had slipped in urine; (12) the Cabinet required an assessment to determine why a patient fell, because addressing that issue might prevent the unnecessary use of a restraint; and (13) because the actions were incorrect, her office wanted to be informed of situations in which a nursing facility had: (a) turned down a doctor's request for restraints; and (b) stated that the use of restraints was against the law.

Representative Lee stated that: (1) during the nine and a half years his mother spent in a nursing home in Elizabethtown, her bed rails were up every night when he visited her before she went to bed; (2) today, the same nursing home: (a) did not use bed rails; and (b) placed crash pads on the floor to catch a falling resident; (3) it would be easier for a nursing home to put up the bed rails at night, rather than stop activities to pick up a patient who had fallen out of

VOLUME 25, NUMBER 3 – SEPTEMBER 1, 1998

bed; and (4) he believed the nursing homes: (a) did not change their attitude on their own initiative; and (b) received a directive from the federal government or the Cabinet regarding the use of restraints.

In response to questions by Representative Lee, Ms. Mitchell stated that: (1) when OBRA 87 was implemented in 1990, the federal government: (a) promulgated 42 CFR 483.13, which stated that a resident had the right to be free from any physical or chemical restraints: 1. imposed for purposes of discipline or convenience; and 2. not required to treat a resident's medical symptoms; and (b) issued interpretive guidelines: 1. to assure that residents were not restrained for the convenience of the facility; and 2. that did away with the physician orders to restrain PRN (whenever necessary); (2) in the past, a nurse might restrain a resident for her convenience if she: (a) was busy distributing medication; and (b) did not have time to stop the resident from wandering out the door or repeatedly to the nurse's station; (3) because the federal government now required that the use of restraints be based on the resident's individual needs, an individual assessment was necessary; (4) while a nursing facility generally would not restrain a resident without a physician ordering the restraint, a nursing facility would use a bed rail if the bedrails: (a) were appropriate because the: 1. bedrails enabled the resident to have mobility in bed; or 2. resident was unable to move himself; and (b) did not serve as a physical restraint against the resident; (5) if a resident tried to climb over the bed rails, a nursing facility was faced with two possible falls for the resident, including a fall: (a) from the bed; or (b) from trying to climb over the bedrails; (6) while she did not promote a patient falling out of bed, there were different situations, based on the individual assessment, when bedrails were and were not appropriate; (7) while she was aware that some nursing homes have told family members that the federal government did not allow the use of restraints, she was proud that the majority of nursing homes were not giving family members this incorrect information; and (8) she needed to know about the situations in which legislators and others were told by nursing facilities that restraints were prohibited.

Representative Lee stated that, because there was a lack of communication between the Cabinet and nursing facilities on what was allowed and what was prohibited regarding the use of restraints, clarification was needed.

Ms. Mitchell stated that: (1) while she felt the Cabinet had addressed these issues, the Cabinet would be happy to look at clarifying the requirements; and (2) a nursing facility would be cited if it did not follow the mandatory assessment process for physical restraints established by the federal government.

In response to questions by Chairman Arnold, Ms. Mitchell stated that the Cabinet was required to: (1) implement the federal regulation; (2) obtain clarification from the federal government on what to tell the nursing homes; and (3) interpret what was appropriate for Kentucky in the nursing facilities.

Chairman Arnold stated that he: (1) agreed with Representative Lee that: (a) there was some miscommunication between the Cabinet and nursing facilities; and (b) clarification was necessary; and (2) thought a permission letter from the guardian of the nursing home resident or the resident should be sufficient.

Representative Lee stated that he knew there had been a definite change in the attitude of nursing home facilities over a short period of time towards the use of restraints.

In response to questions by Senator Kafoglis, Ms. Mitchell stated that: (1) the Cabinet had received some complaints from family members who had talked to an ombudsman; (2) an ombudsman: (a) was trained to resolve many issues that were raised regarding a resident; and (b) would forward complaints regarding the use of restraints to the Cabinet for investigation, because the ombudsman was not trained to evaluate the appropriate use of restraints; (3) each nursing facility was required to post a sign that notified family members of their right to contact the ombudsman with questions or concerns; and (4) in many situations, the ombudsman was the appropriate person to handle a family member's concerns.

Ms. Mitchell stated that: (1) she had several handouts for the Subcommittee members; (2) the FDA issued a safety alert: (a) on the potential hazards with restraint devices in 1992 that discussed: 1. the seriousness of restraint devices; and 2. how the devices had caused deaths; and (b) on the use of bed rails in 1995; (3) the information showed: (a) nationwide concern; and (b) the emphasis

placed at the national level regarding the injuries and deaths that had occurred; (4) an article from the Department for Geriatric Medicine at St. Paul Ramsey Medical Center in Minnesota: (a) was titled "Deaths Caused by Bedrails"; and (b) included descriptive pictures: 1. showing deaths and injuries that had occurred because of entrapment in the bedrails; and 2. of situations in which the resident: a. was not in a Posey vest or other restraint; and b. was in a bed with the bed rails; and (5) she thought the federal government had looked hard at how restraints were used on residents to assure that the restraints were used: (a) because of a medical symptom; and (b) based on an appropriate rationale.

Chairman Arnold stated that a clarification should be sent as soon as possible from the Cabinet to the providers regarding the use of restraints.

The Subcommittee adjourned at 12 noon until September 8, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2

The Locator Index lists all administrative regulations published in VOLUME 25 of the Administrative Register from July, 1998 through June, 1999. 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 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

KRS Index C9

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 25 of the Administrative Register.

Subject Index C13

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
----------------------	----------------------	-------------------	----------------------	----------------------	-------------------

VOLUME 24

The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 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)

12 KAR 4:170E	2326	4-7-98
Expires		10-18-98
31 KAR 4:120E	2575	4-22-98
200 KAR 15:010E	2327	4-7-98
302 KAR 20:040E	2330	4-3-98
401 KAR 5:002E	2576	4-17-98
401 KAR 5:009E	2588	4-17-98
501 KAR 1:030E	1625	1-8-98
Replaced		7-13-98
501 KAR 6:020E	1631	1-8-98
Replaced	2149	7-13-98
501 KAR 6:080E	1633	1-8-98
Replaced	2152	7-13-98
502 KAR 31:010E	2076	2-27-98
Withdrawn		7-14-98
601 KAR 2:020E	1863	2-13-98
787 KAR 1:210E	2078	3-10-98
Replaced	2767	8-17-98
803 KAR 6:010E	2333	3-20-98
806 KAR 6:100E	1227	10-24-97
Replaced	2719	6-25-98
806 KAR 17:110E	1492	12-12-97
Replaced	2689	6-15-98
806 KAR 17:141E	2601	4-15-98
806 KAR 17:150E	2602	4-15-98
815 KAR 8:045E	2079	2-27-98
Replaced	2483	7-13-98
904 KAR 2:015E	1634	1-12-98
Replaced		6-11-98
905 KAR 2:160E	2605	4-20-98
907 KAR 1:006E	2337	4-6-98
907 KAR 1:011E	2339	4-6-98
907 KAR 1:022E	2080	2-18-98
907 KAR 1:025E	2086	2-18-98
Withdrawn		6-30-98
907 KAR 1:026E	2612	4-24-98
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 1:626E	2614	4-24-98
907 KAR 1:640E	2346	4-6-98
907 KAR 1:645E	2350	4-6-98
907 KAR 1:755E	2100	2-18-98
907 KAR 3:030E	1639	12-19-97
908 KAR 2:210E	2352	4-6-98

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:045		
Amended	2136	
Amended	2705	(See Volume 25)
201 KAR 1:300		
Amended	2406	7-13-98

201 KAR 8:400		
Amended	2409	(See Volume 25)
201 KAR 11:011		
Amended	2410	(See Volume 25)
201 KAR 11:147		
Amended	2412	(See Volume 25)
201 KAR 11:170		
Amended	2413	(See Volume 25)
201 KAR 11:175		
Amended	2414	(See Volume 25)
201 KAR 11:190		
Amended	2733	(See Volume 25)
201 KAR 11:230		
Amended	2415	(See Volume 25)
201 KAR 11:350		
Amended	2417	(See Volume 25)
201 KAR 19:087	2241	
As Amended	2617	6-15-98
201 KAR 19:095		
Amended	2141	
As Amended	2619	6-15-98
201 KAR 20:056		
Amended	2421	(See Volume 25)
201 KAR 30:050		
Amended	2736	8-17-98
202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	(See Volume 25)
301 KAR 2:041		
Amended	2739	8-17-98
301 KAR 2:172		
Amended	2741	(See Volume 25)
301 KAR 2:174		
Amended	2744	8-17-98
301 KAR 2:176		
Amended	2745	(See Volume 25)
301 KAR 2:178		
Amended	2748	(See Volume 25)
301 KAR 2:230		
Amended	2752	(See Volume 25)
301 KAR 3:010		
Amended	2422	(See Volume 25)
301 KAR 3:022		
Amended	2754	8-17-98
301 KAR 3:030		
Amended	2756	(See Volume 25)
302 KAR 10:100	2242	
As Amended	2620	6-10-98
302 KAR 15:010		
Amended	2757	8-17-98
302 KAR 31:040	2243	(See Volume 25)
401 KAR 58:005		
Amended	1920	
Amended	2710	7-7-98
401 KAR 58:025		
Amended	1927	
Amended	2717	7-7-98
401 KAR 63:060		
Amended	1765	6-10-98
401 KAR 63:100		
Amended	1770	6-10-98

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
401 KAR 63:104	1798	6-10-98	600 KAR 6:050		
401 KAR 63:541	1800	6-10-98	Amended	2760	
401 KAR 63:560	1801	6-10-98	600 KAR 6:060		
401 KAR 63:640	1803		Amended	2762	
As Amended	2621	6-10-98	600 KAR 6:080		
401 KAR 63:680	1805	6-10-98	Amended	2765	(See Volume 25)
401 KAR 63:741	1806		601 KAR 1:005		
As Amended	2621	6-10-98	Amended	1932	
401 KAR 63:780	1808	6-10-98	Amended	2392	6-16-98
401 KAR 63:800	1810	6-10-98	601 KAR 2:020	2784	(See Volume 25)
401 KAR 63:820	1811	6-10-98	603 KAR 4:040		
401 KAR 63:900	1813	6-10-98	Amended	1936	
401 KAR 63:920	1814	6-10-98	Amended	2395	6-16-98
401 KAR 63:940	1816	6-10-98	701 KAR 5:110		
401 KAR 63:960	1818	6-10-98	Amended	2425	(See Volume 25)
405 KAR 8:001			704 KAR 3:303		
Amended	667		Amended	1941	
As Amended	2622	6-10-98	Amended	2401	
405 KAR 8:030			As Amended	2681	6-16-98
Amended	675		704 KAR 20:082	2481	(See Volume 25)
Amended	1313		704 KAR 20:670		
As Amended	2628	6-10-98	Amended	2426	(See Volume 25)
405 KAR 8:040			725 KAR 2:080	2482	8-17-98
Amended	687		781 KAR 1:020		
Amended	1325		Amended	2429	(See Volume 25)
As Amended	2639	6-10-98	781 KAR 1:040		
405 KAR 16:001			Amended	2433	(See Volume 25)
Amended	704		781 KAR 1:061	2787	(See Volume 25)
As Amended	2652	6-10-98	787 KAR 1:210		
405 KAR 16:060			Amended	2767	8-17-98
Amended	710		803 KAR 2:301		
Amended	1341	(See Volume 25)	Amended	2152	7-13-98
405 KAR 16:090			803 KAR 2:320		
Amended	716		Amended	2154	7-13-98
As Amended	2658	6-10-98	803 KAR 2:500		
405 KAR 16:100			Amended	2160	7-13-98
Amended	719		803 KAR 3:050		
As Amended	2660	6-10-98	Amended	2163	7-13-98
405 KAR 16:160			803 KAR 25:010		
Amended	723		Amended	2436	7-13-98
As Amended	2663	6-10-98	803 KAR 25:096		
405 KAR 18:001			Amended	2166	
Amended	725		As Amended	2681	6-16-98
As Amended	2664	6-10-98	803 KAR 25:101		
405 KAR 18:060			Amended	2169	
Amended	732		As Amended	2684	6-16-98
Amended	1347	(See Volume 25)	803 KAR 25:190		
405 KAR 18:090			Amended	1771	
Amended	738		Amended	2124	
As Amended	2670	6-10-98	As Amended	2686	6-16-98
405 KAR 18:100			806 KAR 6:100	2248	
Amended	741		Amended	2719	6-25-98
As Amended	2672	6-10-98	806 KAR 17:110	2257	
405 KAR 18:160			As Amended	2689	6-16-98
Amended	745		808 KAR 10:010		
As Amended	2675	6-10-98	Amended	2172	(See Volume 25)
405 KAR 18:210			808 KAR 10:020		
Amended	747		Amended	2173	(See Volume 25)
As Amended	2676	6-10-98	808 KAR 10:030		
501 KAR 1:030			Amended	2174	(See Volume 25)
Amended	2143	(See Volume 25)	808 KAR 10:040		
501 KAR 6:020			Amended	2176	(See Volume 25)
Amended	2149	7-13-98	808 KAR 10:080		
501 KAR 6:080			Amended	2177	(See Volume 25)
Amended	2152	7-13-98	808 KAR 10:090		
			Amended	2178	(See Volume 25)

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
808 KAR 10:110			815 KAR 8:045	2483	7-13-98
Amended	2179		815 KAR 20:020		
Amended	2728	(See Volume 25)	Amended	2460	7-13-98
808 KAR 10:130			815 KAR 20:055		
Amended	2180	(See Volume 25)	Amended	2463	7-13-98
808 KAR 10:141	2262	(See Volume 25)	815 KAR 20:120		
808 KAR 10:150			Amended	2465	7-13-98
Amended	2181	(See Volume 25)	902 KAR 8:040		
808 KAR 10:160			Amended	2192	(See Volume 25)
Amended	2182	(See Volume 25)	902 KAR 8:060		
808 KAR 10:170			Amended	2194	(See Volume 25)
Amended	2183	(See Volume 25)	902 KAR 8:070		
808 KAR 10:200			Amended	2197	(See Volume 25)
Amended	2185	(See Volume 25)	902 KAR 8:080		
808 KAR 10:210			Amended	2200	(See Volume 25)
Amended	2186	(See Volume 25)	902 KAR 8:090		
808 KAR 10:225			Amended	2204	(See Volume 25)
Amended	2188	6-25-98	902 KAR 8:100		
808 KAR 10:240			Amended	2206	(See Volume 25)
Amended	2190	(See Volume 25)	902 KAR 8:110		
808 KAR 10:260			Amended	2208	(See Volume 25)
Amended	2190	(See Volume 25)	902 KAR 8:120		
808 KAR 10:300			Amended	2210	(See Volume 25)
Amended	2191	(See Volume 25)	902 KAR 8:130		
808 KAR 10:310	2263	(See Volume 25)	Amended	2215	(See Volume 25)
808 KAR 10:320	2264	(See Volume 25)	902 KAR 8:140		
808 KAR 10:330	2265	(See Volume 25)	Amended	2216	(See Volume 25)
808 KAR 10:340	2266	(See Volume 25)	902 KAR 20:026		
808 KAR 10:350	2268	(See Volume 25)	Amended	2218	(See Volume 25)
808 KAR 10:360	2269	(See Volume 25)	902 KAR 20:048		
808 KAR 10:370	2270	(See Volume 25)	Amended	2226	(See Volume 25)
808 KAR 10:380	2271	(See Volume 25)	902 KAR 20:051		
808 KAR 10:390	2273	(See Volume 25)	Amended	2233	(See Volume 25)
810 KAR 1:001			902 KAR 20:180		
Amended	2445		Amended	1962	
810 KAR 1:009			As Amended	2401	(See Volume 25)
Amended	2447		902 KAR 50:031		
810 KAR 1:015			Amended	1573	
Amended	2450		902 KAR 50:032		
810 KAR 1:016			Amended	1575	
Amended	2452		902 KAR 55:033		
810 KAR 1:018			Amended	1578	
Amended	1776		902 KAR 100:010		
As Amended	2694	6-16-98	Amended	2770	(See Volume 25)
810 KAR 1:026			904 KAR 2:015		
Amended	1779		Amended	2472	(See Volume 25)
As Amended	2698	6-16-98	905 KAR 1:360		
811 KAR 1:085			Amended	2477	(See Volume 25)
Amended	1782		907 KAR 1:595	2788	(See Volume 25)
As Amended	2702	6-16-98	907 KAR 3:030	2790	(See Volume 25)
811 KAR 1:090			908 KAR 1:311	2484	
Amended	2454		908 KAR 1:370	2485	(See Volume 25)
811 KAR 1:215			908 KAR 2:190	2043	
Amended	2456		Amended	2729	(See Volume 25)
815 KAR 7:105			*Statement of Consideration Not Filed by Deadline		
Amended	2769	8-17-98			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
VOLUME 25					
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)			907 KAR 3:065E	48	5-15-98
			ORDINARY ADMINISTRATIVE REGULATIONS:		
30 KAR 4:010E	539	7-15-98	11 KAR 3:100		
31 KAR 4:130E	36	5-20-98	Amended	375	
40 KAR 2:070E	540	7-15-98	11 KAR 4:050		
40 KAR 2:075E	541	7-15-98	Amended	385	
40 KAR 2:076E	543	7-15-98	11 KAR 4:070	450	
40 KAR 6:010E	543	7-15-98	11 KAR 5:001		
105 KAR 1:170E	222	7-14-98	Amended	390	
105 KAR 1:230E	223	7-14-98	11 KAR 12:010		
200 KAR 5:021E	548	7-17-98	Amended	392	
200 KAR 6:060E	225	7-15-98	11 KAR 12:040		
200 KAR 22:005E	549	7-17-98	Amended	393	
301 KAR 2:181E	551	7-16-98	11 KAR 12:060		
301 KAR 2:225E	552	8-10-98	Amended	395	
301 KAR 6:005E	554	7-16-98	11 KAR 12:070		
501 KAR 1:030E	226	7-14-98	Amended	397	
501 KAR 1:050E	229	7-14-98	11 KAR 14:010	451	
501 KAR 2:070E	230	7-14-98	11 KAR 14:020	453	
501 KAR 6:020E	231	7-14-98	11 KAR 14:030	454	
501 KAR 14:010E	233	7-14-98	11 KAR 14:040	456	
502 KAR 31:020E	234	7-14-98	11 KAR 14:050	457	
603 KAR 7:080E	37	5-15-98	11 KAR 14:060	459	
702 KAR 7:125E	555	8-6-98	11 KAR 14:070	460	
704 KAR 20:720E	558	7-15-98	11 KAR 14:080	462	
705 KAR 4:240E	559	8-6-98	11 KAR 15:010	464	
735 KAR 2:010E	236	6-30-98	11 KAR 15:020	465	
735 KAR 2:020E	238	6-30-98	11 KAR 15:030	467	
735 KAR 2:030E	239	6-30-98	11 KAR 15:040	468	
735 KAR 2:040E	240	6-30-98	11 KAR 15:050	470	
735 KAR 2:050E	241	6-30-98	11 KAR 15:060	472	
735 KAR 2:060E	243	6-30-98	11 KAR 15:070	474	
750 KAR 2:010E	244	7-1-98	13 KAR 2:045		
787 KAR 1:200E	245	6-30-98	As Amended	51	7-13-98
803 KAR 2:306E	246	7-2-98	101 KAR 1:325		
803 KAR 2:307E	249	7-2-98	Amended	398	
803 KAR 2:308E	251	7-2-98	103 KAR 7:011	677	
803 KAR 2:311E	253	7-2-98	105 KAR 1:070		
803 KAR 2:316E	255	7-2-98	Amended	589	
803 KAR 2:317E	256	7-2-98	200 KAR 7:011	139	
803 KAR 2:320E	258	7-13-98	200 KAR 15:010		
803 KAR 2:403E	264	7-2-98	Amended	400	
803 KAR 2:404E	265	7-2-98	200 KAR 22:010		
803 KAR 2:418E	269	7-2-98	Repealed	549	7-17-98
803 KAR 2:425E	271	7-2-98	200 KAR 22:020		
806 KAR 15:040E	560	7-21-98	Repealed	549	7-17-98
806 KAR 17:160E	272	6-19-98	200 KAR 22:030		
806 KAR 17:170E	274	7-2-98	Repealed	549	7-17-98
Withdrawn		8-3-98	200 KAR 22:050		
Resubmitted	564	8-6-98	Repealed	549	7-17-98
806 KAR 17:180E	275	6-19-98	200 KAR 22:060		
806 KAR 17:190E	277	7-2-98	Repealed	549	7-17-98
806 KAR 17:200E	278	7-2-98	200 KAR 22:070		
806 KAR 17:210E	280	7-2-98	Repealed	549	7-17-98
806 KAR 17:220E	281	7-2-98	200 KAR 22:080		
904 KAR 2:018E	42	5-15-98	Repealed	549	7-17-98
904 KAR 2:380E	44	6-15-98	200 KAR 22:090		
904 KAR 2:490E	283	6-22-98	Repealed	549	7-17-98
907 KAR 1:025E	285	6-30-98	200 KAR 22:100		
			Repealed	549	7-17-98

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
200 KAR 22:110			202 KAR 3:030		
Repealed	549	7-17-98	Amended	584	
200 KAR 22:120			301 KAR 1:090		
Repealed	549	7-17-98	Amended	409	
200 KAR 22:130			301 KAR 1:155		
Repealed	549	7-17-98	Amended	410	
201 KAR 6:020	678		301 KAR 1:201		
201 KAR 6:030	679		Amended	411	
201 KAR 6:040	680		301 KAR 2:020		
201 KAR 6:050	681		Repealed		4-6-95
201 KAR 6:060	681		301 KAR 2:172		
201 KAR 6:070	682		As Amended	300	8-17-98
201 KAR 6:080	685		301 KAR 2:176		
201 KAR 6:090	686		As Amended	302	8-17-98
201 KAR 8:140			301 KAR 2:178		
Amended	590		As Amended	303	8-17-98
201 KAR 8:400			301 KAR 2:179	486	
As Amended	55	7-9-98	301 KAR 2:230		
201 KAR 8:440	475		As Amended	306	8-17-98
201 KAR 9:320	687		301 KAR 3:010		
201 KAR 11:011			As Amended	62	7-7-98
As Amended	293	8-17-98	301 KAR 3:030		
201 KAR 11:147			As Amended	307	8-17-98
As Amended	57	7-13-98	301 KAR 5:020		
201 KAR 11:170			Amended	600	
As Amended	293	8-17-98	301 KAR 5:030		
201 KAR 11:175			Amended	602	
As Amended	57	7-13-98	302 KAR 20:040		
201 KAR 11:190			Amended	415	
As Amended	294	8-17-98	302 KAR 20:051	488	
201 KAR 11:230			302 KAR 31:040		
As Amended	297	8-17-98	As Amended	308	8-17-98
201 KAR 11:350			401 KAR 5:002	690	
As Amended	58	7-13-98	401 KAR 5:009	701	
201 KAR 15:030			401 KAR 63:021		
Amended	592		Amended	603	
201 KAR 20:056			401 KAR 63:024	711	
As Amended	60	7-9-98	405 KAR 16:060		
201 KAR 20:070			As Amended	63	7-7-98
Amended	592		405 KAR 18:060		
201 KAR 20:091	689		As Amended	66	7-7-98
201 KAR 20:110			501 KAR 1:030		
Amended	594		As Amended	69	7-13-98
201 KAR 20:240			Amended	607	
Amended	596		501 KAR 1:050		
201 KAR 20:260			Amended	610	
Amended	597		501 KAR 2:070	713	
201 KAR 20:370			501 KAR 6:020		
Amended	598		Amended	611	
201 KAR 26:121			501 KAR 6:040		
Amended	403		Amended	125	
201 KAR 26:125			501 KAR 6:110		
Amended	406		Amended	126	
201 KAR 26:180			501 KAR 8:011	490	
Amended	407		501 KAR 14:010	713	
201 KAR 26:215			503 KAR 1:060		
Amended	408		Amended	613	
201 KAR 34:030	476		503 KAR 1:080		
201 KAR 34:040	476		Amended	614	
201 KAR 36:020	480		600 KAR 5:010		
201 KAR 36:030	481		Amended	615	
201 KAR 36:040	483		600 KAR 6:080		
201 KAR 36:050	485		Amended	350	
202 KAR 3:010			601 KAR 1:115		
As Amended	299		Amended	418	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
601 KAR 1:140			808 KAR 10:080		
Amended	420		As Amended	86	6-25-98
601 KAR 1:145			808 KAR 10:090		
Amended	422		As Amended	87	6-25-98
601 KAR 2:020			808 KAR 10:110		
Amended	352		As Amended	87	6-25-98
As Amended	565		808 KAR 10:130		
601 KAR 9:135			As Amended	88	6-25-98
Amended	425		808 KAR 10:140		
701 KAR 5:110			Repealed	88	6-25-98
As Amended	75	7-13-98	808 KAR 10:141		
702 KAR 3:060			As Amended	88	6-25-98
Amended	617		808 KAR 10:150		
702 KAR 3:110			As Amended	88	6-25-98
Amended	618		808 KAR 10:160		
702 KAR 7:065			As Amended	89	6-25-98
Amended	127		808 KAR 10:170		
704 KAR 20:082			As Amended	90	6-25-98
As Amended	76	7-13-98	808 KAR 10:190		
704 KAR 20:305			Repealed	88	6-25-98
Amended	429		808 KAR 10:200		
704 KAR 20:670			As Amended	91	6-25-98
As Amended	76	7-13-98	808 KAR 10:210		
704 KAR 20:690			As Amended	91	
Amended	129		As Amended	313	6-25-98
704 KAR 20:710			808 KAR 10:220		
Amended	619		Repealed	88	6-25-98
725 KAR 1:070	714		808 KAR 10:230		
772 KAR 1:010	139		Repealed	88	6-25-98
772 KAR 1:020	141		808 KAR 10:240		
772 KAR 1:030	142		As Amended	94	6-25-98
772 KAR 1:040	142		808 KAR 10:260		
772 KAR 1:050	144		As Amended	94	6-25-98
772 KAR 1:060	145		808 KAR 10:270		
772 KAR 1:070	146		Repealed	88	6-25-98
781 KAR 1:020			808 KAR 10300		
As Amended	78	7-13-98	As Amended	95	6-25-98
781 KAR 1:030			808 KAR 10:310		
Amended	131		As Amended	95	6-25-98
781 KAR 1:040			808 KAR 10:320		
As Amended	82	7-13-98	As Amended	95	6-25-98
781 KAR 1:050			808 KAR 10:330		
Amended	431		As Amended	96	6-25-98
781 KAR 1:061			808 KAR 10:340		
As Amended	566		As Amended	96	6-25-98
782 KAR 1:030			808 KAR 10:350		
Amended	133		As Amended	97	6-25-98
782 KAR 1:040			808 KAR 10:360		
Amended	136		As Amended	98	6-25-98
789 KAR 1:010	147		808 KAR 10:370		
802 KAR 1:010			As Amended	98	6-25-98
Amended	434		808 KAR 10:380		
804 KAR 4:195	716		As Amended	99	6-25-98
804 KAR 4:350	717		808 KAR 10:390		
806 KAR 3:131	491		As Amended	101	6-25-98
806 KAR 9:241	492		902 KAR 2:090		
806 KAR 17:150	718		Amended	620	
806 KAR 39:081	493		902 KAR 8:040		
808 KAR 10:010			As Amended	566	
As Amended	83	6-25-98	902 KAR 8:060		
808 KAR 10:020			Amended	108	
As Amended	84	6-25-98	As Amended	568	
808 KAR 10:030			902 KAR 8:070		
As Amended	85	6-25-98	Amended	110	
808 KAR 10:040			As Amended	570	
As Amended	86	6-25-98			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
902 KAR 8:080			907 KAR 1:563	731	
Amended	113		907 KAR 1:595		
As Amended	572		Amended	585	
902 KAR 8:090			907 KAR 1:605		
As Amended	575		Amended	442	
902 KAR 8:100			907 KAR 1:626		
Amended	116		Amended	659	
As Amended	575		907 KAR 1:640		
902 KAR 8:110			Amended	444	
As Amended	577		907 KAR 1:645		
902 KAR 8:120			Amended	447	
Amended	118		907 KAR 3:030		
As Amended	578		Amended	586	
902 KAR 8:130			908 KAR 1:370		
As Amended	582		Amended	355	
902 KAR 8:140			908 KAR 2:120		
Amended	123		Amended	661	
As Amended	583		908 KAR 2:130		
902 KAR 20:026			Amended	664	
As Amended	315	8-17-98	908 KAR 2:140		
902 KAR 20:048			Amended	667	
As Amended	321	8-17-98	908 KAR 2:160		
902 KAR 20:051			Amended	670	
As Amended	328	8-17-98	908 KAR 2:190		
902 KAR 20:081			As Amended	346	8-17-98
Amended	623		908 KAR 2:200		
902 KAR 20:180			Amended	672	
As Amended	333	8-17-98	908 KAR 2:210	734	
902 KAR 55:010					
Amended	625				
902 KAR 55:030					
Amended	627				
902 KAR 55:045					
Amended	629				
902 KAR 55:105	721				
902 KAR 55:115	723				
902 KAR 100:010					
As Amended	336	8-17-98			
904 KAR 2:001					
Amended	632				
904 KAR 2:015					
As Amended	101	6-11-98			
904 KAR 2:020					
Amended	634				
904 KAR 2:380					
Amended	636				
904 KAR 2:390					
Amended	640				
904 KAR 2:400					
Amended	642				
904 KAR 2:410					
Amended	644				
905 KAR 1:360					
As Amended	105	6-11-98			
905 KAR 2:141	724				
905 KAR 2:160	725				
907 KAR 1:006					
Amended	437				
907 KAR 1:011					
Amended	438				
907 KAR 1:022					
Amended	649				
907 KAR 1:026					
Amended	654				
907 KAR 560					
Amended	655				

KRS SECTION	REGULATION	KRS SECTION	REGULATION
KRS INDEX			
12.290	735 KAR 2:010E		301 KAR 5:030
	735 KAR 2:020E	150.235	301 KAR 5:030
	735 KAR 2:030E	150.320	301 KAR 2:225E
	735 KAR 2:040E	150.330	301 KAR 2:225E
	735 KAR 2:050E	150.340	301 KAR 2:225E
	735 KAR 2:060E	150.360	301 KAR 1:090
Chapter 13B	802 KAR 1:010		301 KAR 2:179
	907 KAR 1:560		301 KAR 2:225E
	907 KAR 1:563	150.390	301 KAR 2:179
15.330	503 KAR 1:060	150.445	301 KAR 1:155
	503 KAR 1:080	150.450	301 KAR 1:155
16.530	105 KAR 1:170	150.470	301 KAR 1:201
17.500	502 KAR 31:020E	150.603	301 KAR 2:225E
18A.075	101 KAR 1:325	150.620	301 KAR 2:181E
18A.0751	101 KAR 1:325		301 KAR 2:225E
18A.111	101 KAR 1:325	150.640	301 KAR 2:179
18A.430	200 KAR 22:005E	150.710	301 KAR 2:179
18A.445	200 KAR 22:005E	150.990	301 KAR 1:155
44.030	11 KAR 4:050		301 KAR 1:201
Chapter 45A	200 KAR 5:021E		301 KAR 5:020
	200 KAR 7:011		301 KAR 5:030
Chapter 56	200 KAR 7:011	Chapter 151B	603 KAR 7:080E
56.463	200 KAR 6:060E	151B.190	781 KAR 1:030
56.800	200 KAR 6:060E		781 KAR 1:050
56.803	200 KAR 6:060E		789 KAR 1:010
61.525	105 KAR 1:170	154.690	601 KAR 1:145
61.526	105 KAR 1:170	156.070	702 KAR 3:060
61.540	105 KAR 1:170		702 KAR 7:065
61.542	105 KAR 1:170	156.160	702 KAR 3:110
61.545	105 KAR 1:170		705 KAR 4:240E
61.625	105 KAR 1:170	Chapter 157	603 KAR 7:080E
61.637	105 KAR 1:230E	157.060	702 KAR 3:110
61.874	201 KAR 20:240	157.320	702 KAR 7:125E
78.540	105 KAR 1:170	157.350	702 KAR 7:125E
Chapter 96A	603 KAR 7:080E	157.360	702 KAR 7:125E
103.200	200 KAR 15:010	157.615	750 KAR 2:010E
103.2101	200 KAR 15:010	157.650	750 KAR 2:010E
103.286	200 KAR 15:010	157.655	750 KAR 2:010E
117.085	301 KAR 4:130E	157.660	750 KAR 2:010E
131.310-131.370	802 KAR 1:010	157.665	702 KAR 7:125E
131.565	11 KAR 4:050	158.030	902 KAR 2:090
132.420	103 KAR 7:011	158.037	702 KAR 7:125E
133.120	802 KAR 1:010	158.060	702 KAR 7:125E
138.450-138.470	103 KAR 44:060E	158.070	702 KAR 7:125E
	601 KAR 1:145	158.100	702 KAR 7:125E
	601 KAR 1:140	158.115	600 KAR 5:010
138.463	103 KAR 7:011	158.240	702 KAR 7:125E
140.250	103 KAR 7:011	159.035	702 KAR 7:125E
140.990	301 KAR 2:179	159.140	702 KAR 7:125E
148.029	301 KAR 1:155	159.170	702 KAR 7:125E
150.010	301 KAR 2:181E	160.291	702 KAR 3:060
	301 KAR 1:090	160.450	702 KAR 3:060
150.025	301 KAR 2:179	161.020	704 KAR 20:710
	301 KAR 2:181E	161.027	704 KAR 20:710
	301 KAR 2:225E	161.028	704 KAR 20:305
	301 KAR 5:030		704 KAR 20:710
150.090	301 KAR 2:181E		704 KAR 20:720E
150.092	301 KAR 2:179	161.030	704 KAR 20:305
150.105	301 KAR 1:155		704 KAR 20:690
150.120	301 KAR 1:155		704 KAR 20:710
150.170	301 KAR 2:181E		704 KAR 20:720E
	301 KAR 5:030	161.048	704 KAR 20:720E
	301 KAR 1:090	161.200	702 KAR 7:125E
150.175	301 KAR 1:155	161.210	702 KAR 3:060
	301 KAR 5:030	Chapter 163	603 KAR 7:080E
150.195	301 KAR 5:020	163.450-163.470	782 KAR 1:030

KRS SECTION	REGULATION	KRS SECTION	REGULATION
163.510	782 KAR 1:040	Chapter 202B	603 KAR 7:080E
	735 KAR 2:010E	Chapter 205	603 KAR 7:080E
	735 KAR 2:020E	205.200	904 KAR 2:018E
	735 KAR 2:030E	205.211	904 KAR 2:018E
	735 KAR 2:040E	205.231	907 KAR 1:560
	735 KAR 2:050E		907 KAR 1:563
	735 KAR 2:060E	205.237	907 KAR 1:560
164.740-164.785	11 KAR 5:001		907 KAR 1:563
164.744	11 KAR 3:100	205.520	907 KAR 1:006
164.748	11 KAR 3:100		907 KAR 1:011
	11 KAR 4:050		907 KAR 1:026
164.753	11 KAR 3:100		907 KAR 1:560
164A.300-164A.380	11 KAR 12:010		907 KAR 1:605
164A.305	11 KAR 12:040		907 KAR 1:626
164A.310	11 KAR 12:070		907 KAR 1:640
164A.325	11 KAR 12:080		907 KAR 1:645
164A.330	11 KAR 12:040	205.710-205.800	904 KAR 2:001
	11 KAR 12:070		904 KAR 2:380
164A.335	11 KAR 12:070		904 KAR 2:400
164A.350	11 KAR 12:060		904 KAR 2:410
164A.410	772 KAR 1:060	205.992	904 KAR 2:380
164A.560	772 KAR 1:010	Chapter 209	603 KAR 7:080E
	772 KAR 1:020	Chapter 210	603 KAR 7:080E
164A.565	772 KAR 1:010	211.180	902 KAR 2:090
	772 KAR 1:020	213.080	201 KAR 8:140
164A.570	772 KAR 1:030	215.520	902 KAR 2:090
164A.575	772 KAR 1:020	Chapter 216	603 KAR 7:080E
	772 KAR 1:040	216A.070	201 KAR 6:020
164A.580	772 KAR 1:020		201 KAR 6:030
	772 KAR 1:040		201 KAR 6:080
164A.585	772 KAR 1:020		201 KAR 6:090
	772 KAR 1:040	216A.080	201 KAR 6:020
164A.590	772 KAR 1:020	216A.090	201 KAR 6:040
	772 KAR 1:040		201 KAR 6:070
164A.595	772 KAR 1:020	216A.110	201 KAR 6:060
	772 KAR 1:040	216A.130	201 KAR 6:050
164A.600	772 KAR 1:020		201 KAR 6:060
	772 KAR 1:040	216B.010-216B.130	902 KAR 20:081
164A.605	772 KAR 1:020	216B.990	902 KAR 20:081
	772 KAR 1:050	217.005-217.215	902 KAR 55:115
164A.610	772 KAR 1:070	217.992	902 KAR 55:115
164A.620	772 KAR 1:020	218A.020-218A.130	902 KAR 55:045
	772 KAR 1:060	218A.030-218A.140	902 KAR 55:105
171.450	725 KAR 1:070	218A.150	902 KAR 55:010
171.520	725 KAR 1:070	218A.160	902 KAR 55:010
186.020	601 KAR 9:135	218A.170	902 KAR 55:010
186.050	601 KAR 9:135	218A.170-218A.240	902 KAR 55:105
186.051	601 KAR 9:135	218A.200	902 KAR 55:010
186.276	601 KAR 1:115	224.01-010	401 KAR 5:002
186.281	601 KAR 1:115	224.10	401 KAR 5:009
	601 KAR 1:145	224.10-100	401 KAR 5:002
186.286	601 KAR 1:115		401 KAR 63:021
Chapter 194	603 KAR 7:080E		401 KAR 63:024
194.025	907 KAR 1:563	224.10-110	401 KAR 5:002
	907 KAR 3:065E	224.16-050	401 KAR 5:002
Chapter 195	603 KAR 7:080E	224.16-060	401 KAR 5:002
195.025	907 KAR 3:065E	224.20-100	401 KAR 63:021
Chapter 196	501 KAR 6:020		401 KAR 63:024
	501 KAR 6:040	224.20-110	401 KAR 63:021
	501 KAR 6:110		401 KAR 63:024
196.035	501 KAR 8:011	224.20-120	401 KAR 63:021
Chapter 197	501 KAR 6:020		401 KAR 63:024
	501 KAR 6:040	224.70	401 KAR 5:009
	501 KAR 6:110	224.70-100	401 KAR 5:002
197.020	501 KAR 8:011	224.70-110	401 KAR 5:002
199.892-199.896	905 KAR 2:141	224.73	401 KAR 5:009
	905 KAR 2:160	235.040	301 KAR 6:005E
Chapter 202A	501 KAR 14:010	235.050	301 KAR 6:005E
	603 KAR 7:080E	235.070	301 KAR 6:005E

KRS SECTION

REGULATION

KRS SECTION

REGULATION

235.080
241.060
243.040
243.157
Chapter 257
257.010
Chapter 273
Chapter 281

281.014
281.600-281.670
281.626
304.39-350
309.1315
309.1335
311.595
311.597
313.080
313.305
314.011
314.041

314.042

314.051

314.071

314.073

314.101

314.111

314.161

316.125

316.130

316.140

319.015

319.032

319.050

320.210

335.515

335.525

335.530

335.535

335.540

335.545

338.051

338.061

301 KAR 6:050E
804 KAR 4:195
804 KAR 4:350
804 KAR 4:350
302 KAR 20:040
302 KAR 20:051
603 KAR 7:080E
601 KAR 1:115
603 KAR 7:080E
907 KAR 3:065E
601 KAR 1:140
601 KAR 1:145
806 KAR 39:081
201 KAR 34:040
201 KAR 34:030
201 KAR 9:320
201 KAR 9:320
201 KAR 8:440
201 KAR 8:440
902 KAR 20:081
201 KAR 20:070
201 KAR 20:110
201 KAR 20:240
201 KAR 20:260
201 KAR 20:370
201 KAR 20:240
902 KAR 20:081
201 KAR 20:070
201 KAR 20:110
201 KAR 20:240
201 KAR 20:260
201 KAR 20:370
201 KAR 20:240
201 KAR 20:370
201 KAR 20:240
201 KAR 20:091
201 KAR 20:110
201 KAR 20:260
201 KAR 20:240
201 KAR 15:030
201 KAR 15:030
201 KAR 15:030
201 KAR 26:215
201 KAR 26:121
201 KAR 26:180
201 KAR 26:125
902 KAR 20:081
201 KAR 36:040
201 KAR 36:020
201 KAR 36:020
201 KAR 36:030
201 KAR 36:040
201 KAR 36:050
201 KAR 36:050
803 KAR 2:306E
803 KAR 2:307E
803 KAR 2:308E
803 KAR 2:311E
803 KAR 2:316E
803 KAR 2:317E
803 KAR 2:320E
803 KAR 2:403E
803 KAR 2:404E
803 KAR 2:418E
803 KAR 2:425E
803 KAR 2:306E
803 KAR 2:307E
803 KAR 2:308E
803 KAR 2:311E

341.360

341.380

367.150

367.46971

367.46973

367.46981

403.210-403.240

403.215

403.715-403.785

405.450

405.465

405.467

405.490

405.520

406.011-406.180

407.010-407.480

431.240

Chapter 439

439.340

439.352

439.356

439.358

533.010

Chapter 645

1998 Acts c. 75

1998 Acts c. 105

1998 Acts c. 166

1998 Acts c. 256

1998 Acts c. 403

1998 Acts c. 426

1998 Acts c. 444

1998 Acts c. 496

1998 Acts c. 542

1998 Acts c. 556

1998 Acts c. 575

803 KAR 2:316E
803 KAR 2:317E
803 KAR 2:320E
803 KAR 2:403E
803 KAR 2:404E
803 KAR 2:418E
803 KAR 2:425E
907 KAR 1:011
787 KAR 1:200E
40 KAR 2:070E
40 KAR 2:075E
40 KAR 2:076E
40 KAR 2:070E
40 KAR 2:075E
40 KAR 2:076E
40 KAR 2:070E
40 KAR 2:075E
40 KAR 2:076E
40 KAR 2:070E
40 KAR 2:075E
40 KAR 2:076E
904 KAR 2:001
904 KAR 2:400
904 KAR 2:410
908 KAR 2:210
904 KAR 2:410
904 KAR 2:410
904 KAR 2:410
904 KAR 2:410
904 KAR 2:001
904 KAR 2:400
904 KAR 2:410
904 KAR 2:390
904 KAR 2:001
501 KAR 8:011
501 KAR 6:020
501 KAR 6:040
501 KAR 6:110
501 KAR 1:030
501 KAR 1:050
501 KAR 1:050
501 KAR 1:050
501 KAR 2:070
603 KAR 7:080E
105 KAR 1:230E
105 KAR 1:170
105 KAR 1:230E
601 KAR 1:140
601 KAR 1:145
11 KAR 4:070
11 KAR 14:010
11 KAR 14:020
11 KAR 14:030
11 KAR 14:040
11 KAR 14:050
11 KAR 14:060
11 KAR 14:070
11 KAR 14:080
806 KAR 15:040E
904 KAR 2:001
705 KAR 4:240E
806 KAR 17:150
806 KAR 17:170E
30 KAR 4:010E
201 KAR 8:440
11 KAR 4:070
11 KAR 15:010
11 KAR 15:020
11 KAR 15:030

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	11 KAR 15:040		908 KAR 2:140
	11 KAR 15:050		908 KAR 2:160
	11 KAR 15:060		908 KAR 2:200
	11 KAR 15:070	26 USC	105 KAR 1:230E
1998 Acts c. 581	40 KAR 2:070E	29 USC	781 KAR 1:030
	40 KAR 2:075E		781 KAR 1:050
	40 KAR 2:076E		782 KAR 1:030
1998 Acts c. 606	40 KAR 6:010E		782 KAR 1:040
1998 Acts c. 616	40 KAR 6:010E	31 USC	11 KAR 4:050
1998 GA, SB 28	902 KAR 20:081		904 KAR 2:001
1998 GA, SB 353	806 KAR 3:131	33 USC	401 KAR 5:002
1998 GA, HB 115	902 KAR 55:105	38 USC	907 KAR 1:011
1998 GA, HB 131	902 KAR 2:090	42 USC	806 KAR 17:160E
1998 GA, HB 315	806 KAR 17:160E		806 KAR 17:220E
	806 KAR 17:180E		904 KAR 2:001
	806 KAR 17:190E		904 KAR 2:018E
	806 KAR 17:200E		904 KAR 2:490E
	806 KAR 17:210E		907 KAR 1:006
	806 KAR 17:220E		907 KAR 1:011
1998 GA, HB 321	600 KAR 5:010		907 KAR 1:022
1998 GA, HB 429	806 KAR 9:241		907 KAR 1:025E
1998 GA, HB 496	806 KAR 3:131		907 KAR 1:026
	806 KAR 39:081		907 KAR 1:560
21 CFR	902 KAR 55:010		907 KAR 1:563
	902 KAR 55:045		907 KAR 1:605
26 CFR	105 KAR 1:230E		907 KAR 1:626
29 CFR	803 KAR 2:306E		907 KAR 1:645
	803 KAR 2:307E		907 KAR 3:065E
	803 KAR 2:308E	49 USC	601 KAR 9:135
	803 KAR 2:311E		603 KAR 7:080E
	803 KAR 2:316E	PL 94-142.2	905 KAR 2:141
	803 KAR 2:317E	PL 99-457	905 KAR 2:141
	803 KAR 2:320E	PL 105-33	907 KAR 1:006
	803 KAR 2:403E		
	803 KAR 2:404E		
	803 KAR 2:418E		
	803 KAR 2:425E		
31 CFR	11 KAR 4:050		
34 CFR	11 KAR 3:100		
	11 KAR 15:060		
	781 KAR 1:030		
	782 KAR 1:030		
	782 KAR 1:040		
40 CFR	401 KAR 5:002		
	401 KAR 5:009		
42 CFR	907 KAR 1:011		
	907 KAR 1:022		
	907 KAR 1:025E		
	907 KAR 1:560		
	907 KAR 1:563		
	907 KAR 1:605		
	907 KAR 1:626		
	907 KAR 1:645		
	907 KAR 3:065E		
45 CFR	806 KAR 17:160E		
	904 KAR 2:001		
	904 KAR 2:380		
	904 KAR 2:390		
	904 KAR 2:400		
	904 KAR 2:410		
	905 KAR 2:141		
	905 KAR 2:160		
8 USC	907 KAR 1:011		
15 USC	904 KAR 2:001		
	904 KAR 2:410		
20 USC	11 KAR 3:100		
	11 KAR 15:010		
	908 KAR 2:120		
	908 KAR 2:130		

SUBJECT INDEX

ABSENTEE BALLOT

(See Elections, State Board)

AD VALOREM TAX

(See Taxation)

AGENTS, CONSULTANTS, SOLICITORS, ADJUSTERS

(See Insurance)

AGRICULTURE

Livestock sanitation; 302 KAR Chapter 20

AIR QUALITY

General Standards of Performance

Existing sources emitting toxic air pollutants; 401 KAR 63:021

Repeal of 401 KAR 63:022; 401 KAR 63:024

ALCOHOLIC BEVERAGE CONTROL

Licensing

Out-of-state brewers' licenses; 804 KAR 4:350

Repeal of 804 KAR 4:190; 804 KAR 4:195

ARCHIVES

(See Libraries and Archives)

ART THERAPISTS

Code of ethics; 201 KAR 34:040

Continuing education requirements; 201 KAR 34:030

ASSISTIVE TECHNOLOGY LOAN CORPORATION

General eligibility criteria; 789 KAR 1:010

BLIND, DEPARTMENT FOR

Appeal procedures; 782 KAR 1:040

Scope and nature of services; 782 KAR 1:030

CABINET FOR FAMILIES AND CHILDREN

Social Insurance

Public assistance; 904 KAR Chapter 2

CABINET FOR HEALTH SERVICES

Medicaid

Medicaid services; 907 KAR Chapter 1

Payment and services; 907 KAR Chapter 3

CLASS D FELONS

(See Corrections)

COMMONWEALTH MERIT SCHOLARSHIP PROGRAM

(See Higher Education Assistance Authority)

COMMUNICABLE DISEASES

(See Public Health)

CONSUMER PROTECTION

No Telephone Solicitation Calls List; 40 KAR 2:075E

Telephone solicitation merchants, registration procedure; 40 KAR 2:070E

Violations of act, procedures, notification; 40 KAR 2:076E

CONTROLLED SUBSTANCES

(See Public Health)

CORRECTIONS, DEPARTMENT OF

Class D Felons

Work release; 501 KAR 2:070

Execution Hearings

Repeal of 501 KAR 8:010; 501 KAR 8:011

Institution Policies and Procedures

Corrections policies and procedures; 501 KAR 6:020

Kentucky State Penitentiary; 501 KAR 6:040

Roederer Correctional Complex; 501 KAR 6:110

Parole Board

Determining parole eligibility; 501 KAR 1:030

Granting final discharge from parole; 501 KAR 1:050

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR 14:010

COUNSELORS (PROFESSIONAL)

Code of ethics; 201 KAR 36:040

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Fees, renewal date; 201 KAR 36:020

CRIMINAL JUSTICE TRAINING

Law Enforcement Council

Certification of schools; 503 KAR 1:080

Definitions; 503 KAR 1:060

DAY CARE

(See Social Services)

DEAF AND HARD OF HEARING (COMMISSION)

Interpreter Referral Services

Definitions; 735 KAR 2:010E

Grievance procedure; 735 KAR 2:060E

Interpreter protocols; 735 KAR 2:040E

Interpreter qualifications; 735 KAR 2:030E

Processing requests for services; 735 KAR 2:050E

Program parameters; 735 KAR 2:020E

DEER

(See Fish and Wildlife Resources)

DENTAL HYGIENISTS

(See Dentistry)

DENTISTRY

Continuing education compliance; 201 KAR 8:140

Fee schedule; 201 KAR 8:440

DISTRICT SUPPORT SERVICES

School Administration, Finance

Document filing dates; 702 KAR 3:110

Procedure for payment of employees; 702 KAR 3:060

School Terms, Attendance, Operations

High school interscholastic athletics, designation of agent; 702 KAR 7:065

Pupil attendance; 702 KAR 7:125E

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Department

District Support Services

School administration, finance; 702 KAR Chapter 3

School terms, attendance, operation; 702 KAR Chapter 7

Special Instructional Services

Instructional programs; 705 KAR Chapter 4

Education Professional Standards Board; 704 KAR Chapter 20

SUBJECT INDEX

Libraries and Archives
Archives; 725 KAR Chapter 1

EDUCATION DEPARTMENT

District Support Services
School administration, finance; 702 KAR Chapter 3
School terms, attendance, operation; 702 KAR Chapter 7
Special Instructional Services
Instructional programs; 705 KAR Chapter 4

EDUCATION PROFESSIONAL STANDARDS BOARD

Kentucky Teacher Internship Program; 704 KAR 20:690
Professional certificate for exceptional work experience, limited to secondary education; 704 KAR 20:720E
Professional certificate for instructional leadership-school principal, all grades; 704 KAR 20:710
Written examination prerequisites for teacher certification; 704 KAR 20:305

EDUCATION TECHNOLOGY FUNDING PROGRAM

(See School Facilities Construction Commission)

EDUCATIONAL SAVINGS PLAN TRUST

(See Higher Education Assistance Authority)

ELECTIONS, STATE BOARD

Forms and Procedures
Absentee ballot application by facsimile; 31 KAR 4:130E

EMBALMERS, FUNERAL DIRECTORS

Fees; 201 KAR 15:030

EMPLOYEES, STATE

(See also Personnel)
Personnel
Board; 101 KAR Chapter 1
Retirement; 105 KAR Chapter 1

EMPLOYMENT SERVICES

Unemployment Insurance
Maximum weekly benefit rate; 787 KAR 1:200E

ENGINEERING

Repeal of 200 KAR 7:010; 200 KAR 7:011

EXECUTION HEARINGS

(See Corrections)

FAMILIES AND CHILDREN CABINET

Social Services
Day care; 905 KAR Chapter 2

FINANCE AND ADMINISTRATION

Engineering; 200 KAR Chapter 7
Personnel pilot programs; 200 KAR Chapter 22
Private Activity Bond Allocation Committee; 200 KAR Chapter 15
Property; 200 KAR Chapter 6
Purchasing; 200 KAR Chapter 5

FISH AND WILDLIFE RESOURCES

Fish
Commercial fishing requirements; 301 KAR 1:155
Bow fishing; 301 KAR 1:090
Fishing limits; 301 KAR 1:201
Game
Dove, wood duck, teal, other migratory game bird hunting; 301 KAR 2:225E
Quota deer hunt procedures; 301 KAR 2:181E
State park deer hunts; 301 KAR 2:179

Licensing

License agent requirements, responsibilities; 301 KAR 5:020
Purchasing licenses, obtaining replacement licenses; 301 KAR 5:030

Water Patrol

Boat registration fees; 301 KAR 6:050E

FUNERAL DIRECTORS

(See Embalmers and Funeral Directors)

HEALTH INSURANCE CONTRACTS

(See Insurance)

HEALTH SERVICES AND FACILITIES

(See Public Health)

HEALTH SERVICES CABINET

Mental Health/Mental Retardation Services
Mental health; 908 KAR Chapter 2
Public Health
Communicable diseases; 902 KAR Chapter 2
Controlled substances; 902 KAR Chapter 55
Health services, facilities; 902 KAR Chapter 20

HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority
Authority claims, set off; 11 KAR 4:050
Reports by postsecondary institutions; 11 KAR 4:070
Commonwealth Merit Scholarship Program
Definitions; 11 KAR 15:010
Determination procedure; 11 KAR 15:040
Disbursement; 11 KAR 15:050
Dual enrollment under consortium agreement; 11 KAR 15:030
Overaward, refund, repayment procedure; 11 KAR 15:060
Records and reports; 11 KAR 15:070
Student eligibility report; 11 KAR 15:020
Educational Savings Plan Trust
Benefits payable from the fund; 11 KAR 12:070
Definitions; 11 KAR 12:010
Residency classification for vested participation agreements; 11 KAR 12:040
Refund cancellation, payment; 11 KAR 12:060
Grant Program
Definitions; 11 KAR 5:001
Loan Program
Administrative wage garnishment; 11 KAR 3:100
Osteopathic Medicine Scholarship Program
Application of payments; 11 KAR 14:060
Award determination; 11 KAR 14:020
Disbursement process; 11 KAR 14:030
Notification; 11 KAR 14:070
Overawards and refunds; 11 KAR 14:040
Process; 11 KAR 14:010
Records and administrative regulations; 11 KAR 14:050
Repayment deferment; 11 KAR 14:080

HIGHWAYS

Mass Transportation
Human service transportation delivery; 603 KAR 7:080E

INSURANCE

Agents, Consultants, Solicitors, Adjusters
Repeal of 806 KAR 9:240; 806 KAR 9:241
Authorization of Insurers, General Requirements
Repeal of 806 KAR 3:130; 806 KAR 3:131
Health Insurance Contracts
Approval criteria, requirements for reentry into the Kentucky health insurance market; 806 KAR 17:220E
Creditable coverage for health insurance; 806 KAR 17:160E

SUBJECT INDEX

Genetic testing; 806 KAR 17:170E
Guaranteed Acceptance Program reporting requirements; 806 KAR 17:210E
Guaranteed Acceptance Program requirements; 806 KAR 17:190E
Health benefit plan rate filing requirements; 806 KAR 17:150
Severity codes for high-cost conditions; 806 KAR 17:200E
Standard health benefit plan, comparison format; 806 KAR 17:180E
Life Insurance and Annuity Contracts
Licensing, reporting, general requirements for viatical settlement providers and brokers; 806 KAR 15:040E
Motor Vehicle Repairs (No-fault)
Repeal of 806 KAR 39:080; 806 KAR 39:081

INTERPRETER REFERRAL SERVICES
(See Deaf and Hard of Hearing (Commission))

INSTRUCTIONAL PROGRAMS
(See Special Instructional Services)

JUSTICE CABINET
Corrections Department
Class D felons; 501 KAR Chapter 2
Execution hearings; 501 KAR Chapter 8
Institution policies and procedures; 501 KAR Chapter 6
Parole Board; 501 KAR Chapter 1
Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR Chapter 14
Criminal Justice Training
Law Enforcement Council; 503 KAR Chapter 1
State Police
Sex Offender Registration System; 502 KAR Chapter 31

KENTUCKY LIEN INFORMATION SYSTEM
Implementation of system; 30 KAR 4:010E

KENTUCKY LOAN PROGRAM
(See Higher Education Assistance Authority)

KENTUCKY VICTIM AND WITNESS PROTECTION PROGRAM
Program; 40 KAR 6:010E

KENTUCKY WORKS
(See Social Insurance)

LABOR CABINET
Occupational safety, health; 803 KAR Chapter 2

LAW, DEPARTMENT OF
Consumer protection; 40 KAR Chapter 2
Kentucky Victim, Witness Protection Program; 40 KAR Chapter 6

LAW ENFORCEMENT COUNCIL
(See Criminal Justice Training)

LIBRARIES AND ARCHIVES
Archives
Standards for documents presented for recording; 725 KAR 1:070

LIEN INFORMATION SYSTEM
(See Kentucky Lien Information System)

LIVESTOCK SANITATION
Composting of domestic livestock, poultry, fish; 302 KAR 20:051
Entry into Kentucky; 302 KAR 20:040

MEDICAID
Medicaid Services
Dental services; 907 KAR 1:026
Dental services reimbursement; 907 KAR 1:626
Income standards; 907 KAR 1:640
Initial, continuing eligibility, procedures for determining; 907 KAR 1:605
Medicaid covered services hearings, appeals; 907 KAR 1:563
Medicaid hearings, appeals regarding eligibility; 907 KAR 1:560
Nursing, intermediate care facilities for the mentally retarded; 907 KAR 1:022
Nursing, intermediate care facilities for the mentally retarded, payments; 907 KAR 1:025E
Resource standards; 907 KAR 1:645
Technical eligibility requirements; 907 KAR 1:011
Title XVIII benefits, coverage for eligible persons; 907 KAR 1:006
Payment and Services
Nonemergency medical transportation waiver services, payments; 907 KAR 3:065E

MEDICAL LICENSURE
Physician training, supervision of noncertified individuals in the use of automatic external defibrillators (AEDs), procedures; 201 KAR 9:320

MENTAL HEALTH, MENTAL RETARDATION SERVICES
Mental Health
Domestic violence offender treatment certification standards; 908 KAR 2:210
Kentucky Early Intervention Program
Assessment, service planning; 908 KAR 2:130
Coverage, payment for services; 908 KAR 2:200
Covered services; 908 KAR 2:160
Primary service coordination, assistive technology; 908 KAR 2:140
Program; 908 KAR 2:120

MOTOR CARRIERS
(See Vehicle Regulation)

MOTOR VEHICLE REPAIRS
(See Insurance)

MOTOR VEHICLE TAX
(See Vehicle Regulation; and Taxation)

MURRAY STATE UNIVERSITY
Affiliated corporations; 772 KAR 1:070
Annual audit; 772 KAR 1:030
Financial management responsibility delegation; 772 KAR 1:020
Fund acquisition, disbursement, accounting system, records and annual report; 772 KAR 1:010
Fund for excellence; 772 KAR 1:060
Issuance of bonds; 772 KAR 1:050
Purchase, inventories, sales of surplus property, capital construction procedures; 772 KAR 1:040

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air Quality; 401 KAR Chapter 63
Water; 401 KAR Chapter 5

NONPUBLIC SCHOOL TRANSPORTATION
(See Transportation)

NURSING (BOARD OF)
Applications for licensure and registration; 201 KAR 20:370
Fees for applications and services; 201 KAR 20:240
Licensure by endorsement; 201 KAR 20:110

SUBJECT INDEX

Licensure by examination; 201 KAR 20:070
Prelicensure programs of nursing, organization, administration; 201 KAR 20:260
Repeal of 201 KAR 20:090; 201 KAR 20:091

NURSING HOME ADMINISTRATORS

Code of ethics; 201 KAR 6:080
Complaint management process; 201 KAR 6:090
Continuing education requirements; 201 KAR 6:070
Fees; 201 KAR 6:060
License renewal; 201 KAR 6:040
Licensure, other requirements; 201 KAR 6:020
Licensure by endorsement; 201 KAR 6:050
Temporary permits; 201 KAR 6:030

OCCUPATIONAL SAFETY, HEALTH

Air contaminants; 803 KAR 2:320E
Fire protection; 803 KAR 2:311E
Hazardous materials; 803 KAR 2:307E
Occupational health, environmental control; 803 KAR 2:306E; 803 KAR 2:403E
Personal protective equipment; 803 KAR 2:308E
Personal protective, life saving equipment; 803 KAR 2:404E
Special industries; 803 KAR 2:317E
Toxic and hazardous substances; 803 KAR 2:425E
Underground construction, caissons, cofferdams, compressed air; 803 KAR 2:418E
Welding, cutting, brazing; 803 KAR 2:316E

OCCUPATIONS AND PROFESSIONS

Art therapists; 201 KAR Chapter 34
Counselors (professional); 201 KAR Chapter 36
Dentistry; 201 KAR 8:440
Embalmers and funeral directors; 201 KAR Chapter 15
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Nursing home administrators; 201 KAR Chapter 6
Psychology; 201 KAR Chapter 26

OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM (See Higher Education Assistance Authority)

PAROLE BOARD (See Corrections)

PENAL INSTITUTIONS (See Corrections Department)

PERSONNEL (See also Employees, State) Board

Probationary periods; 101 KAR 1:325

PERSONNEL PILOT PROGRAMS

Repeal of 200 KAR 22:010, 020, 030, 050, 060, 070, 080, 090, 100, 110, 120, 130; 200 KAR 22:005E

PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE Formula for allocation of private activity bonds; 200 KAR 15:010

PROPERTY (STATE) Lease of new construction; 200 KAR 6:060E

PSYCHIATRIC OR FORENSIC PSYCHIATRIC FACILITY VICTIM NOTIFICATION SYSTEM (See Corrections)

PSYCHOLOGY (BOARD) Health service provider designation; 201 KAR 26:125

Licensure or certification by reciprocity, 201 KAR 26:180
Nonresident status; 201 KAR 26:215
Scope of practice; 201 KAR 26:121

PUBLIC HEALTH

Communicable Diseases
Tuberculosis detection, prevention, control; 902 KAR 2:090
Controlled Substances
Controlled substance prescription blanks, requirements; 902 KAR 55:015
Drug possession by hospice, home health agency; 902 KAR 55:115
Exempt prescription products; 902 KAR 55:045
Licensing of manufacturers, wholesalers; 902 KAR 55:010
Schedule IV substances; 902 KAR 55:030
Health Services and Facilities
Home health agencies, operation, services; 902 KAR 20:081

PUBLIC PROTECTION AND REGULATION

Alcoholic Beverage Control
Licensing; 804 KAR Chapter 4
Insurance
Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
Authorization of Insurers, general requirements; 806 KAR Chapter 3
Health insurance contracts; 806 KAR Chapter 17
Life insurance, annuity contracts; 806 KAR Chapter 15
Motor vehicle reparations (no-fault); 806 KAR Chapter 39
Tax Appeals Board; 802 KAR Chapter 1

PURCHASING

Manual of policies and procedures; 200 KAR 5:021E

RETIREMENT

Kentucky Employees Retirement System
Membership form requirements; 105 KAR 1:170
Reemployment after retirement; 1065 KAR 1:230E

REVENUE

(See also Taxation)
Ad Valorem Tax
Local assessment; 103 KAR Chapter 7
Selective Excise Tax
Motor vehicle usage; 103 KAR Chapter 44

SCHOOL FACILITIES CONSTRUCTION COMMISSION Education Technology Funding Program Guidelines; 750 KAR 2:010E

SECRETARY OF STATE

Kentucky Lien Information System; 30 KAR Chapter 4

SELECTIVE EXCISE TAX (See Taxation)

SEX OFFENDER REGISTRATION SYSTEM (See State Police)

SOCIAL INSURANCE

Public Assistance
Child support collection, distribution; 904 KAR 2:410
Child Support Program
Application process; 904 KAR 2:380
Confidentiality, program administration contracts, agreements; 904 KAR 2:020
Paternity establishment; 904 KAR 2:390
Definitions; 904 KAR 2:001
Establishment, review, modification of child support, medical support orders; 904 KAR 2:400

SUBJECT INDEX

Transportation services for Kentucky Works; 904 KAR 2:018E
Welfare to Work Grant Program; 904 KAR 2:490E

SOCIAL SERVICES

Day Care

Child day care assistance program; 905 KAR 2:160
Repeal of 905 KAR 2:140; 905 KAR 2:141

SPECIAL INSTRUCTIONAL SERVICES

Instructional Programs

School to careers; 705 KAR 4:240E

STATE POLICE

Sex Offender Registration System
System; 502 KAR 31:020E

SWINE FEEDING OPERATIONS

(See Water)

TAX APPEALS (BOARD)

Rules of practice and procedure; 802 KAR 1:010

TAXATION

Ad Valorem Tax, Local Assessment

Repeal of 103 KAR 7:010 and 020; 103 KAR 7:011

Selective Excise Tax, Motor Vehicle Usage

Motor vehicle usage tax valuation; 103 KAR 44:060E

TELEPHONE SOLICITATION

(See Consumer Protection)

TOURISM DEVELOPMENT CABINET

Fish and Wildlife Resources

Fish; 301 KAR Chapter 1

Game; 301 KAR Chapter 2

Licensing; 301 KAR Chapter 5

Water patrol; 301 KAR Chapter 6

TRANSPORTATION CABINET

Highways

Mass transportation; 603 KAR Chapter 7

Nonpublic School Transportation

Transportation of nonpublic school students; 600 KAR 5:010

Vehicle Regulation

Motor carriers; 601 KAR Chapter 1

Motor vehicle tax; 601 KAR Chapter 9

UNEMPLOYMENT INSURANCE

(See Employment Services)

VEHICLE REGULATION

Motor Carriers

Taxicabs, limousines, disabled persons vehicles; 601 KAR 1:115

U-drive-it permit application procedures; 601 KAR 1:140

U-drive-it permit, usage tax reporting, paying; 601 KAR 1:145

Motor Vehicle Tax

Apportioned registration; 601 KAR 9:135

VICTIM AND WITNESS PROTECTION PROGRAM

(See Kentucky Victim and Witness Protection Program)

VICTIM NOTIFICATION

(See Corrections)

VOCATIONAL REHABILITATION

Administration

Carl D. Perkins Comprehensive Rehabilitation Center; 781 KAR
1:050

Selection, economic test, order; 781 KAR 1:030

WATER

Quality

Definitions for 401 KAR Chapter 5; 401 KAR 5:002

Swine feeding operations, permits; 401 KAR 5:009

WORKFORCE DEVELOPMENT CABINET

Assistive Technology Loan Corporation; 789 KAR Chapter 1

Blind, Department for; 782 KAR Chapter 1

Employment Services

Unemployment insurance; 787 KAR Chapter 1

Vocational Rehabilitation

Administration; 781 KAR Chapter 1

