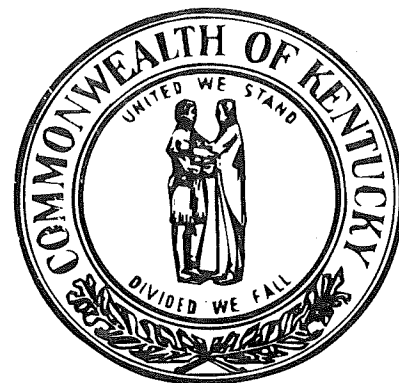


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 4
THURSDAY, OCTOBER 1, 1998

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on October 13, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 749-752 of this Administrative Register.

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

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VOLUME 25, NUMBER 4 – OCTOBER 1, 1998

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VOLUME 25, NUMBER 4 – OCTOBER 1, 1998

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – October 13, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

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

OFFICE OF THE SECRETARY OF STATE

Kentucky Lien Information System

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

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)

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

Division of Consumer Protection

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

40 KAR 2:075E. Commonwealth of Kentucky, no telephone solicitation calls list.

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), and (16).

Kentucky Victim and Witness Protection Program

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

**REVENUE CABINET
Department of Law
Division of Tax Policy**

Ad Valorem Tax; Local Assessment

103 KAR 7:011. Repeal of 103 KAR 7:010 and 103 KAR 7:020.

Selective Excise Tax; Motor Vehicle Usage

103 KAR 44:060E. Motor vehicle usage tax valuation.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

General Rules

105 KAR 1:170 & E. Membership form requirements.

105 KAR 1:230E. Reemployment after retirement. (Deferred from September)

Office of the Secretary

Purchasing

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

Property

200 KAR 6:060E. Lease of new construction. (Deferred from September)

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. (Deferred from September)

Personnel Pilot Programs

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. (Will not be replaced by ordinary; expires 2/18/99)

GENERAL GOVERNMENT CABINET

Board of Licensure for Nursing Home Administrators

201 KAR 6:020. Other requirements for licensure.

201 KAR 6:030. Temporary permits.

201 KAR 6:040. Renewal of license.

201 KAR 6:050. Licensure by endorsement.

201 KAR 6:060. Fees.

201 KAR 6:070. Continuing education requirements.

201 KAR 6:080. Code of ethics.

201 KAR 6:090. Complaint management process.

Board of Dentistry

201 KAR 8:140. Continuing education compliance.

Board of Medical Licensure

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

Board of Embalmers and Funeral Directors

201 KAR 15:030. Fees.

Board of Nursing

201 KAR 20:070. Licensure by examination.

201 KAR 20:091. Repeal of 201 KAR 20:090.

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:240. Fees for applications and for services.

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201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.
201 KAR 20:370. Applications for licensure and registration.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

Game

301 KAR 2:181E. Quota deer hunt procedures.
301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.

Licensing

301 KAR 5:020. License agent requirements and responsibilities.
301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.

Water Patrol

301 KAR 6:005E. Boat registration fees.

DEPARTMENT OF AGRICULTURE Division of Animal Health

Livestock Sanitation

302 KAR 20:051. Domestic livestock, poultry and fish composting. (Pubic Hearing in August)

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

Water Quality

401 KAR 5:002 & E. Definitions of terms for 401 KAR Chapter 5.
401 KAR 5:009 & E. Permits for swine feeding operations.

Division for Air Quality

General Standards of Performance

401 KAR 63:021. Existing sources emitting toxic air pollutants.
401 KAR 63:024. Repeal of 401 KAR 63:022.

JUSTICE CABINET Department of Corrections

Kentucky Parole Board

501 KAR 1:030 & E. Determining parole eligibility.
501 KAR 1:050 & E. Granting final discharge from parole.

Class D Felons

501 KAR 2:070 & E. Work release.

Office of the Secretary

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

Psychiatric or Forensic Psychiatric Facility Victim Notification System

501 KAR 14:010 & E. Psychiatric or forensic psychiatric facility victim notification system.

Department of State Police

Sex Offender Registration System

502 KAR 31:020E. Sex offender registration system. (Deferred from September)

Department of Criminal Justice Training

Kentucky Law Enforcement Council

503 KAR 1:060. Definitions.
503 KAR 1:080. Certification of schools.

TRANSPORTATION CABINET

Nonpublic School Transportation

600 KAR 5:010. Transportation of nonpublic school students.

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles. (Public Hearing in August)
601 KAR 1:140. U-drive-it permit application procedures. (Public Hearing in August)
601 KAR 1:145. Reporting and paying of usage tax pursuant to a U-drive-it permit. (Public Hearing in August)

Department of Fiscal Management

Division of Audit Review

Motor Vehicle Tax

601 KAR 9:135. Apportioned registration. (Public Hearing in August)

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 Administration and Finance

702 KAR 3:060. Procedure for payment of employees.
702 KAR 3:110. Document filing dates.

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School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. (Deferred from August)
702 KAR 7:125E. Pupil attendance.

Education Professional Standards Board

Board

704 KAR 20:710. Professional certificate for instructional leadership – school principal, all grades.
704 KAR 20:720E. Professional certificate for exceptional work experience, limited to secondary education.

Board of Education

Department of Education

Office of Special Instructional Services

Instructional Programs

705 KAR 4:240E. School to careers.

**Department of Libraries and Archives
Division of Public Records**

Archive

725 KAR 1:070. Standards for documents presented for recording.

Commission on the Deaf and Hard of Hearing

Interpreter Referral Services (Deferred from September)

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. (Deferred from September)

**CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services**

Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate. (Deferred from September)

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

Tax Appeals

802 KAR 1:010. Rules of practice and procedure. (Written Comments Received)

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Occupational Safety and Health (Deferred from September)

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 Alcoholic Beverage Control**

Licensing

804 KAR 4:195. Repeal of 804 KAR 4:190.
804 KAR 4:350. Out-of-state brewers' licenses.

Department of Insurance

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:241. Repeal of 806 KAR 9:240. (Not Amended After Hearing)

Life Insurance and Annuity Contracts

806 KAR 15:040E. Licensing, reporting, and general requirements for viatical settlement providers and brokers.

Health Insurance Contracts (Deferred from September)

806 KAR 17:141E. Repeal of 806 KAR 17:140. (Will Not Be Replaced by Ordinary) (Deferred from July)
806 KAR 17:150 & E. Health benefit plan rate filing requirements.

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- 806 KAR 17:160E. Creditable coverage for health insurance.
806 KAR 17:170E. Genetic testing.
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.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology and Health Planning**

Communicable Diseases

- 902 KAR 2:090. Tuberculosis detection, prevention, and control.

Health Services and Facilities

- 902 KAR 20:081. Operations and services; home health agencies.

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.

Controlled Substances

- 902 KAR 55:010. Licensing of manufacturers and wholesalers.
902 KAR 55:030. Schedule IV substances.
902 KAR 55:045. Exempt prescription products.
902 KAR 55:105. Requirements for controlled substance prescription blanks.
902 KAR 55:115. Drug possession by hospice or home health agency.

**CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development**

Public Assistance

- 904 KAR 2:001. Definitions.
904 KAR 2:018E. Transportation services for Kentucky Works. (Deferred from August)
904 KAR 2:020. Child Support Program.
904 KAR 2:380 & E. Child Support Program application process.
904 KAR 2:390. Child Support Program paternity establishment.
904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.
904 KAR 2:410. Child support collection and distribution.
904 KAR 2:490E. Welfare to Work Grant Program.

Department for Social Services

Day Care

- 905 KAR 2:141. Repeal of 905 KAR 2:140.
905 KAR 2:160 & E. Child day care assistance program.

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

Medicaid Services

- 907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services.
907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from September)
907 KAR 1:026 & E. Dental services.
907 KAR 1:560 & E. Medicaid hearings and appeals.
907 KAR 1:563 & E. Medicaid covered services hearings and appeals.
907 KAR 1:626 & E. Reimbursement of dental services.

Payment and Services

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

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)

Division of Mental Retardation

Mental Health

- 908 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.
908 KAR 2:130. Kentucky Early Intervention Program Assessment and Service Planning.
908 KAR 2:140. Kentucky Early Intervention Program primary service coordination and assistive technology.
908 KAR 2:160. Kentucky Early Intervention Program covered services.
908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services.
908 KAR 2:210 & E. Domestic violence offender treatment certification standards.

VOLUME 25, NUMBER 4 – OCTOBER 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 4 – OCTOBER 1, 1998

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, SEPTEMBER 15, 1998

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

August 18, 1998

- (1) Regulation number and title: **12 KAR 1:115**, Sampling, analyzing, testing, and tolerances.
- (2) The University of Kentucky, College of Agriculture, Division of Regulatory Services intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, October 23, 1998, at 10 a.m. in room 109 at The University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275.
- (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 October 23, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Wilbur Frye, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275. Fax: (606) 323-9931. Phone: (606) 257-2827.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services 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 sampling, analyzing, testing, and tolerances of seed is KRS 250.081.
 - (b) The administrative regulation that the University of Kentucky, College of Agriculture, Division of Regulatory Services intends to promulgate will amend 12 KAR 1:115, as follows: Section 3(1) will be amended to incorporate the new "Rules For Testing Seeds," issued by the Association of Official Seed Analysts in 1997.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and regulations and to update the referenced "Rules For Testing Seeds" to include changes made by the Association of Official Seed Analysts during 1997.
 - (d) The benefits expected from administrative regulation are: To incorporate those changes made to "Rules For Testing Seeds" into the procedures for testing seeds used by the seed laboratory at the University of Kentucky, Division of Regulatory Services. The procedures specified in "Rules For Testing Seeds" are recognized by state and federal seed control officials as the official procedures for testing regulatory samples.
 - (e) The administrative regulation will be implemented as follows: Changes made by the Association of Official Seed Analysts to "Rules or Testing Seeds" will be implemented by seed laboratory personnel when testing official seed samples for regulatory purposes.

COUNCIL ON POSTSECONDARY EDUCATION

15 September, 1998

- (1) **13 KAR 2:020**. Guidelines for undergraduate admissions to the state-supported higher education institutions. The subject matter of the proposed amendment to the administrative regulation is the setting of minimum admissions requirements to Kentucky's state-supported postsecondary education institutions.
- (2) The Council on Postsecondary Education (CPE) is charged by KRS 164.020 with responsibility for determining minimum admissions to the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to recognize the new minimum high school graduation requirements and the new programs of study.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 22, 1998, at 9 a.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.
- (c) 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) calendar days prior to October 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request no later than October 12, 1998, to the following address: Council on Postsecondary Education; Attn: Roger Sugarman, Associate Director for Research and Policy Studies; 1024 Capital Center Drive, Suite 320; Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.
- (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 Council on Postsecondary Education at the address listed above.
- (7) The following information relates to the proposed administrative regulation:

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- (a) The statutory authority for the promulgation of an administrative regulation relating to the admissions process is KRS 164.020.
- (b) The administrative regulation the CPE intends to promulgate is a new regulation as 13 KAR 2:020. Undergraduate admissions to state-supported higher education institutions.
- (c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of KRS 164.020, CPE revise the standards for admission to state-supported postsecondary education institutions.
- (d) The benefit expected from the administrative regulation is to ensure that students are able to understand the requirements for admission to state-supported postsecondary education institutions.
- (e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

15 September, 1998

- (1) **13 KAR 2:090.** Commonwealth Merit Scholarship Program. The subject matter of the proposed amendment to the administrative regulation is the Commonwealth Merit Scholarship Program adopted by the 1998 General Assembly through the 1998 Ky. Acts ch. 575.
- (2) The Council on Postsecondary Education (CPE) is charged by the 1998 Ky. Acts ch. 575 with the responsibility for overall coordination of the Commonwealth Merit Scholarship Program. CPE, KHEAA and KDE all have specific responsibilities in regard to the program and each agency will promulgate administrative regulations to address the specific aspects of their responsibilities. CPE is charged with setting an approved curriculum that will determine high school students' eligibility for participation in the Commonwealth Merit Scholarship Program and for defining 5 year programs of study at postsecondary education institutions. CPE must also set standards for nonpublic, noncertified high schools and for students who receive GED diplomas. CPE must also determine the methodology for adapting SAT scores to an ACT standard and inform local education agencies on how to calculate GPA.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 21, 1998, at 9 a.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.
- (c) 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) calendar days prior to October 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request no later than October 11, 1998, to the following address: Council on Postsecondary Education; Attn: Norma Northern, Director for Finance; 1024 Capital Center Drive, Suite 320; Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.
- (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 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 Council on Postsecondary Education at the address listed above.
- (7) The following information relates to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Commonwealth Merit Scholarship Program is the 1998 Ky. Acts ch. 575.
- (b) The administrative regulation the CPE intends to promulgate is a new regulation as 13 KAR 2:090. Commonwealth Merit Scholarship Program.
- (c) The necessity and function of the proposed administrative regulation is as follows: In order to effectively implement the provisions of 1998 Ky. Acts ch. 575, CPE must adopt standards and define terms relative to the new Commonwealth Merit Scholarship Program.
- (d) The benefit expected from the administrative regulation is to ensure that students are able to participate in the Commonwealth Merit Scholarship Program as intended by the 1998 Ky. Acts ch. 575.
- (e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

STATE BOARD OF ELECTIONS

August 19, 1998

- (1) **31 KAR 4:050.** Hearing procedures.
- (2) The State Board of Elections intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulation has been scheduled for October 27, 1998 at 3 p.m., EST, at the offices of the State Board of Election, 140 Walnut Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by a 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 October 27, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Mr. George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 573-7100, Fax: (502) 573-4369.
- (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 George Russell at the State Board of Elections at the address

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above.

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

(a) The statutory authority for the amendment of an administrative regulation relating to the administrative hearing procedures for the removal of precinct and election officers is KRS 117.045(7), 117.015 and Chapter 13B.

(b) The administrative regulation the State Board of Elections intends to amend will set forth the procedures for the removal of a precinct or election officer including the procedures for an administrative hearing if one is required. The amended regulation will bring the hearing process in compliance with the process outlined in KRS Chapter 13B, governing administrative hearings.

(c) The necessity and function of the proposed amendments to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate to implement administrative hearing procedures for the removal of precinct and election officers and also the statutory mandate that those hearing procedures adhere to the provisions of KRS Chapter 13B.

(d) The benefit expected from this administrative regulation is a more efficient and fair administrative hearing procedure for the removal of precinct and election officers.

(e) The regulation will be implemented by the State Board of Elections. The State Board of Elections will implement this regulation by merely adhering to the procedures contained within the regulation for the removal of precinct and election officers.

DEPARTMENT FOR LOCAL GOVERNMENT

September 10, 1998

(1) Regulation number and title: **109 KAR 9:010**. Area Development Fund.

(2) The Department for Local Government 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 October 22, 1998, at 9 a.m., at Department for Local Government, 1024 Capital Center Drive #340, 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 October 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: Bob Arnold, Commissioner, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601; telephone (502) 573-2382; fax (502) 573-2939.

(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. Persons who wish to file this request may obtain a request form from the Department for Local Government 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 42.360.

(b) The administrative regulation that the Department for Local Government intends to promulgate will amend 109 KAR 9:010, Area Development Fund. It will establish a 2 year funding cycle and roll together the current Area Development Fund balance with the Fiscal Year 1999 allocation into the respective Area Development District accounts. It will allow the Area Development Districts two years to select projects, obligate funds, implement and close out the projects. If after completion of the two year cycle and the Area Development District has not expended the Area Development Funds allocated to it, the funds shall be returned to the Department for Local Government Area Development Fund account. No local government unit will be allowed to have more than one project at a time in existence where that project uses Area Development Funds.

(c) The necessity and function of the proposed administrative regulation is as follows: To allow the area development districts to function in a more effective manner in implementation of Area Development projects.

(d) The benefits expected from administrative regulation are: Will allow for better use of funds by the area development districts, so as to allow area development projects to be done in a more efficient and professional manner.

(e) The administrative regulation will be implemented as follows: Through training the various area development districts by the Department for Local Government Division of Training and ADD Services.

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

September 10, 1998

(1) **201 KAR 10:050**. Fees.

(2) The Kentucky State Board of Examiners and Registration of Landscape Architects intends to promulgate an administrative regulation amending the structure of fees for the examination administered to licensure candidates.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 27, 1998, at 1 p.m., at the Board Office located at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 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 October 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jane Alexander Gardner, Executive Director, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263, FAX (502) 573-6687.

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

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1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Examiners and Registration of Landscape Architects at the above address, or by calling (502) 573-3263 between the hours of 8 a.m. and 5 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulation relating to the subject matter listed above is KRS 323A.060.
 - (b) The administrative regulation that the Kentucky State Board of Examiners and Registration of Landscape Architects intend to promulgate will amend 201 KAR 10:050, Fees. It will change the structure of examination fees being charged to examination candidates.
 - (c) The necessity and function of the proposed administrative regulations is as follows: As parts of the examination have been combined and the number of sections of the examination has been reduced, the fee schedule needs to change to accommodate these national changes.
 - (d) The benefits expected from the administrative regulation are: As there are fewer examination sections to be administered, this amendment will lead to a more efficient examination administration.
 - (e) The administrative regulation will be implemented as follows: All examination candidates will be informed of the change in structure of the examination fees and the fees collected will be aligned with the cost of the examination.

September 10, 1998

- (1) **201 KAR 10:080**. Continuing education.
- (2) The Kentucky State Board of Examiners and Registration of Landscape Architects 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 October 27, 1998, at 2 p.m., at the Board Office located at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 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 October 27, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jane Alexander Gardner, Executive Director, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263, FAX (502) 573-6687.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Examiners and Registration of Landscape Architects at the above address, or by calling (502) 573-3263 between the hours of 8 a.m. and 5 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulation relating to the subject matter listed above is KRS 323A.210(2)(a), (b).
 - (b) The administrative regulation that the Kentucky State Board of Examiners and Registration of Landscape Architects intend to promulgate will amend 201 KAR 10:080, Continuing education. It will limit carry-forward hours relating to tour and travel activities.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To clarify an area of the current regulation which is currently unclear.
 - (d) The benefits expected from the administrative regulation are: Licensees will consistently understand the policy of carry-forward hours.
 - (e) The administrative regulation will be implemented as follows: All licensees will be informed of this amendment by a letter from the board in a timely manner such that it will not negatively impact their continuing education credits.

KENTUCKY BOARD OF BARBERING

August 25, 1998

- (1) **201 KAR 14:180**. Fees.
- (2) The Kentucky Board of Barbering 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 October 26, 1998, at 10 a.m., at the State Board's office, 9114 Leesgate Road, Suite 6, Louisville, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 26, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Bill Maggard, Jr., Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, Phone: (502) 425-1579; Fax: (502) 429-5223.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Bill Maggard at the above address, or by calling (502) 425-1579 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:

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- (a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KRS 317.440(2).
- (b) The administrative regulation that the Kentucky Board of Barbering intends to promulgate will not amend an existing administrative regulation. It will set forth in detail fees charged by the board.
- (c) The necessity and function of the proposed administrative regulations is as follows: It is necessitated by KRS 317.440(2) and sets forth in detail fees charged by the board.
- (d) The benefits expected from administrative regulation are: Fees charged by the board will be clearly established.
- (e) The administrative regulation will be implemented as follows: Fees will be charged pursuant to the administrative regulation and the Kentucky Board of Barbering will enforce the administrative regulation. This new administrative regulation will be applied the same to all.

STATE BOARD OF PODIATRY

September 11, 1998

- (1) **201 KAR 25:031**. Continuing education.
- (2) The State Board of Podiatry 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 October 22, 1998, at 10 a.m., Capitol Building, 700 Capitol Avenue, Room 114, 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 October 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: C.A. Nava, D.P.M., Secretary, 110 Hubbard Lane, Louisville, Kentucky 40207, (502) 897-2047.
- (b) On request for public hearing, a person shall state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to C.A. Nava, D.P.M. at the above address, or by calling (502) 897-2047 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is KRS 31.410(4).
- (b) The administrative regulation that the State Board of Podiatry intends to promulgate will amend an existing administrative regulation. It will detail the minimum requirements for continuing education for licensed podiatrists and the requirements for reporting the continuing education that the podiatrist have acquired to the board.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323.450 allows the board to establish by administrative regulation requirements for mandatory continuing education for podiatrists licensed to practice within the Commonwealth as a condition for obtaining their annual license renewal. This administrative regulation establishes the continuing education and the reporting requirements that podiatrists must meet to obtain their annual license renewal.
- (d) The benefit expected from this administrative regulation is that continuing education requirements for licensed podiatrists will insure that licensed podiatrists acquire the information necessary maintain their professional competence. The amendment to the regulation will clarify the types of courses that will meet the board's requirements for approval.
- (e) This administrative regulation will be implemented as follows: Licensed podiatrists will be required to comply with this administrative regulation, and the State Board of Podiatry will enforce the administrative regulation.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

August 21, 1998

- (1) Regulation number and title: **301 KAR 1:058**, Methods for taking turtles.
- (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 October 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 October 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 or 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).

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- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:058 as follows: It will list the species of turtles that may be taken.
- (c) The necessity and function of the proposed administrative regulation is to regulate the methods by which turtles may be taken or sold commercially.
- (d) The benefits expected from the administrative regulation are limiting commerce in turtle species with low populations and protecting other species from capture in turtle traps.
- (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.

August 21, 1998

- (1) Regulation number and title: **301 KAR 1:140**, Special commercial fishing permit.
- (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 October 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 October 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 or 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).
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:140 as follows: It will clarify that an assistant must be in the presence of the permit holder while fishing under the special commercial permit.
- (c) The necessity and function of the proposed administrative regulation is to allow gill and trammel nets in lakes where rough fish populations should be reduced to improve ecological balance.
- (d) The benefits expected from the administrative regulation are better management of fisheries resources.
- (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.

August 21, 1998

- (1) Regulation number and title: **301 KAR 2:049**, Seasons for furbearers and small game on specified areas.
- (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 October 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 October 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 or 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).
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:049 as follows: It will remove the references to a special spring squirrel season on wildlife management areas. 301 KAR 2:251 will be amended to incorporate this season statewide, including wildlife management areas.
- (c) The necessity and function of the proposed administrative regulation is to assure a continued supply of small game and furbearer species by protecting them from overharvest.
- (d) The benefits expected from the administrative regulation are providing outdoor recreation while protecting wildlife resources.
- (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.

August 21, 1998

- (1) Regulation number and title: **301 KAR 2:251**, Hunting and trapping seasons and limits for furbearers and small game.
- (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 October 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.

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(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 October 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 or 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)

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:251 as follows: It will establish a state-wide two-week squirrel hunting season opening the first Saturday in June of each year.

(c) The necessity and function of the proposed administrative regulation is to assure a continued supply of small game and furbearer species by protecting them from overharvest.

(d) The benefits expected from the administrative regulation are providing outdoor recreation while protecting wildlife resources.

(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.

ECONOMIC DEVELOPMENT CABINET

September 10, 1998

(1) Regulation number and title: **307 KAR 6:010**, Kentucky Investment Fund Act.

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

(3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for October 21, 1998, at 10 a.m. (Eastern Standard Time), at the Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, first floor, room G-1.

(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 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 days prior to October 21, 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: Robin Fields Kinney, General Counsel, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-1535.

(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 Cabinet for Economic Development 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 HB 206 approved and signed into law during the 1998 Regular Session of the General Assembly.

(b) The administrative regulation that the Cabinet for Economic Development intends to promulgate will not amend an existing administrative regulation. It will establish additional procedures and standards for the certification of investment funds and investment fund managers.

(c) The necessity and function of the proposed administrative regulation is as follows: The necessity and function of the proposed regulation is to prescribe the forms for the application to KEDFA by a potential investment fund manager and the criteria for approval of an investment fund managers and investment funds pursuant to the Kentucky Investment Fund Act.

(d) The benefits expected from administrative regulation are: The benefits expected from the administrative regulation are to establish operating procedures for receiving application and the process for approval of investment fund managers and investment funds. The administrative regulation will provide notice to applicants of the procedures.

(e) The administrative regulation will be implemented as follows: The staff of the Kentucky Economic Development Finance Authority will implement the administrative regulation.

JUSTICE CABINET Department of Juvenile Justice

September 14, 1998

(1) **505 KAR 1:010**, Definitions.

(2) The Department of Juvenile Justice 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 October 28, 1998, at 10 a.m. in the Department of Juvenile Justice conference room, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, 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 October 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: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, Frankfort, Kentucky, 40601. Phone (502) 573-2738, Fax (502) 573-0438.
- (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 Juvenile Justice 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 505 KAR 1:010, Definitions, is Ky. Acts ch. 606, sec. 1 of 98 HB 455.
- (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate sets forth definitions relating to the formation, operation and duties of the local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein.
- (c) The necessity and function of the proposed administrative regulation is as follows: Ky. Acts ch. 606, sec. 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth definitions that will apply for this chapter.
- (d) The benefits expected from the administrative regulation are clarification of the meanings of terms used in proposed 505 KAR 1: 050, 1:060, and 1:070.
- (e) The administrative regulation will be implemented by staff. Staff and council representatives will comply with all terms and conditions of the administrative regulation.

September 14, 1998

- (1) **505 KAR 1:050**, Local juvenile delinquency prevention councils: formation procedure.
- (2) The Department of Juvenile Justice 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 October 28, 1998, at 10 a.m. in the Department of Juvenile Justice conference room, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, 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 October 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: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, Frankfort, Kentucky, 40601. Phone (502) 573-2738, Fax (502) 573-0438.
- (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 Juvenile Justice 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 505 KAR 1:050, Local Juvenile Delinquency Prevention Councils: formation procedure, is Ky. Acts ch. 606, sec. 1 of 98 HB 455.
- (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate sets forth procedures for the formation of local juvenile delinquency prevention councils.
- (c) The necessity and function of the proposed administrative regulation is as follows: Ky. Acts ch. 606, sec. 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth the procedure for forming councils.
- (d) The benefits expected from the administrative regulation are the establishment of regulatory authority for the procedures relating to council representation, appointment of council members and chairpersons, as well as appointment terms.
- (e) The administrative regulation will be implemented by staff. Staff and council representatives will comply with all terms and conditions of the administrative regulation.

September 14, 1998

- (1) **505 KAR 1:060**, Local juvenile delinquency prevention councils: operation and duties.
- (2) The Department of Juvenile Justice 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 October 28, 1998, at 10 a.m. in the Department of Juvenile Justice conference room, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, 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

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least 10 days prior to October 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: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, Frankfort, Kentucky, 40601. Phone (502) 573-2738, Fax (502) 573-0438.

(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 Juvenile Justice 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 505 KAR 1:060, Local Juvenile Delinquency Prevention Councils: operation and duties, is Ky. Acts ch. 606, sec. 1 of 98 HB 455.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate sets forth procedures for the operation and duties of local juvenile delinquency prevention councils.

(c) The necessity and function of the proposed administrative regulation is as follows: Ky. Acts ch. 606, sec. 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth the procedures concerning the operation and duties of the councils.

(d) The benefits expected from the administrative regulation are the establishment of regulatory authority for the procedures relating to the operation and duties of local councils which define and clarify council responsibilities and eligibility for applying for and receiving grant funding from the Department of Juvenile Justice.

(e) The administrative regulation will be implemented by staff. Staff and council representatives will comply with all terms and conditions of the administrative regulation.

September 14, 1998

(1) **505 KAR 1:070**, Local juvenile delinquency prevention councils: Community Juvenile Justice Partnership Grant Program.

(2) The Department of Juvenile Justice 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 October 28, 1998, at 10 a.m. in the Department of Juvenile Justice conference room, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, 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 October 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: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building Three, Third Floor, Frankfort, Kentucky, 40601. Phone (502) 573-2738, Fax (502) 573-0438.

(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 Juvenile Justice 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 505 KAR 1:070, Local Juvenile Delinquency Prevention Councils: Community Juvenile Justice Partnership Grant Program, is Ky. Acts ch. 606, sec. 1 of 98 HB 455.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate sets forth procedures for the administration and operation of the Community Juvenile Justice Partnership Grant Program.

(c) The necessity and function of the proposed administrative regulation is as follows: Ky. Acts ch. 606, sec. 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth the procedures concerning the administration and operation of the grant program.

(d) The benefits expected from the administrative regulation are the establishment of regulatory authority for the procedures relating to the administration and operation of the Community Juvenile Justice Partnership Grant Program which establishes eligibility criteria for grant funds, as well as the proposal solicitation, review, approval and award process.

(e) The administrative regulation will be implemented by staff. Staff and council representatives will comply with all terms and conditions of the administrative regulation.

TRANSPORTATION CABINET

September 15, 1998

(1) **603 KAR 5:050**, Uniform traffic control devices.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to the administrative regulation 603 KAR 5:050. This administrative regulation incorporates by reference the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) that all states and local governments are required to follow. The Federal Highway Administration is updating the MUTCD one section at a time since it is such a voluminous document. Recently, Revision #6 was published and the Transportation Cabinet intends to incorporate it in the administrative regulation.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 22, 1998 at 1 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 October 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: Charles Harman, Staff Assistant, Transportation Cabinet, Mail Code 10-13, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622. Telephone: (502) 564-7650. Fax: (502) 564-5238.
- (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 MUTCD is KRS 189.337 and 23 CFR 655 Subpart F.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:050. It will incorporate by reference the recently published Revision #6 to the MUTCD.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways to adopt a uniform system of traffic control devices. The Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. This administrative regulation defines the system by incorporating by reference the Manual on Uniform Traffic Control Devices.
- (d) The benefits expected from the administrative regulation are continued compliance with the federal mandate on traffic control devices.
- (e) The administrative regulation will be implemented as follows: As a state or local government makes changes to its highway system, the new provisions of the MUTCD contained in Revision #6 will be followed.
- (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 or telephone number no later than October 12, 1998.

CABINET FOR HEALTH SERVICES
Office of Inspector General

September 4, 1998

- (1) **902 KAR 20:091**, Facilities specifications, operation and services; community mental health-mental retardation center.
- (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 October 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 October 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, Office of the Counsel, Cabinet for Health Services, 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, CHR Building, 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 all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
- (b) The cabinet intends to amend the regulation to include requirements for crisis stabilization units. The cabinet also intends to amend Section 4(6)(b) regarding the limitation of three refills on prescriptions. Section 4(3) and (6)(g) will be amended to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice.
- (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 community mental health-mental retardation centers.
- (d) The benefits expected from these proposed amendments are that crisis stabilization units will provide an alternative to hospitalization for individuals experiencing an acute psychiatric crisis where nursing care is not otherwise required. The other amendments 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.

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CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

September 15, 1998

- (1) **904 KAR 2:006**. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).
- (2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Regulations Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to 904 KAR 2:006, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), (3), 1998 Ky. Acts chs. 100, 426, EO 98-731 and 42 USC 601 et seq.
 - (b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 904 KAR 2:006, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) to:
 1. Remove the number of hours an adult receiving K-TAP is required to participate in work activities from the definition of "work" to comply with the federally mandated change in 904 KAR 2:370 which increases the required minimum number of hours per week from 20 hours to 25 hours per week.
 2. Change the penalty for a case that contains a parent or caretaker relative who voluntarily quits or refuses to take a job or reduces the number of hours worked, without good cause and cross reference with criteria, including penalties and good cause, in 904 KAR 2:370.
 3. Change the criteria for ineligibility for UP applicants for refusing or quitting a job (or reducing hours) currently 30 days prior to application. Revise criteria for a UP applicant or recipient who quits a job, refuses employment or reduces hours of employment (without good cause) to coincide with proposed change in penalty listed in number 2 of 7(b) of this Notice of Intent.
 4. Remove the eligibility requirement of working under the 100 hours a month for the recipients (only) of the unemployed parent program. The requirement is unchanged for applicants of the unemployed parent program who must be considered unemployed at application by working under 100 hours a month.
 5. In conformity with 1998 Ky. Acts ch. 427, allow a public assistance recipient, who would otherwise be ineligible due to a conviction of a drug felony, to remain eligible if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment program or is pregnant.
 6. Change the name of the "primary wage earner" to "qualifying parent" using the same definition.
 7. Make amendments to Sections 1 and 4 to implement changes to the alien eligibility criteria pursuant to PL 105-33 to include Cuban and Haitian entrants and Amerasian immigrants.
 8. Clarify that time limitations apply to the family of individuals who are not eligible for K-TAP because they are considered a fugitive felon in Section 21 or drug felon in Section 22.
 9. Make amendments to conform with language in 1998 Ky. Acts ch. 100, regarding welfare reform, and 1998 Ky. Acts ch. 426 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.
 10. Remove the seven (7) day time frame from forced separation to allow potential eligibility to exist the first day of forced separation.
 11. Forms 202TP, PA-219, CS333, and CS333.1 will be amended to reflect previous policy changes now incorporated in these forms and to change the name of the department.
 12. Revise Section 17 regarding the potential entitlement to other programs by treating unemployed parent cases the same as basic K-TAP recipients by removing the exception allowed for UP cases who refuse to apply for unemployment benefits.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer public assistance program. KRS 205.200(2) requires that the conditions of eligibility to receive money grants from be prescribed by administrative regulations.
 - (d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring the definition of "work" into compliance with the federal mandated number of hours an individual is required to participate in work activities pursuant to 904 KAR 2:370. Changes to eligibility for aliens will conform with PL 105-33. Removing the 100 hour maximum limit to work for Unemployed Parent Program recipients will comply with the minimum number of hours mandated to work as contained in 904 KAR 2:370. Removing the 7 day timeframe for eligibility for K-TAP due to forced separation will allow victims of domestic violence to become potentially eligible for assistance sooner.
 - (e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Community Based Services will be responsible for implementing the administrative regulation.

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September 15, 1998

(1) **904 KAR 2:016**, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP).

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), 42 USC 601 et seq., 1998 Ky. Acts ch. 100, sec.4, ch. 426 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 904 KAR 2:016, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP). This administrative regulation is necessary to implement following changes:

1. Eliminate the applicant eligibility test and retain current gross income test and benefit calculation methods.

2. Until the first K-TAP check is received, disregard all child support payments, instead of the first \$50. Child support income will continue to be considered in the gross income test.

3. In cases when the 4 months of the 1/3 deduction have been used, eliminate the 12 month waiting period to allow the deduction to be applied again when earnings, reported timely, have been received from new employment.

4. Amend good cause criteria in Section 4(4) to comply with good cause reasons in 904 KAR 2:370, Section 6.

5. Change references of 905 KAR 2:150 to 905 KAR 2:160.

6. Amend the alien income and resources section regarding the methods of calculating the deeming of sponsor's income to comply with Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997.

7. Clarify that the exclusion of earnings of a child attending school also includes the earnings of a minor teenage parent under age 18. Exclude the earnings of a teenage parent age 18 or 19 attending school.

8. Due to the subject matter, transfer the Family Alternatives Diversion Program in Section 14 and relocation assistance in Section 15 to new topical regulations. NOI's are concurrently filed for 904 KAR 2:500, Family Alternatives Diversion (FAD) and 904 KAR 2:510, Relocation assistance.

9. Make amendments to conform with language in 1998 Ky. Acts ch. 100, regarding welfare reform, and 1998 Ky. Acts ch. 426 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.

10. Clarify that all work study income is disregarded.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive money grants be prescribed by administrative regulations. This administrative regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will eliminate the applicant eligibility test and the consideration of child support income in payment calculations (until the first K-TAP check is received). These changes will simplify eligibility determinations and will insignificantly increase the number of eligible recipients. Disregarding the earnings of a teenager in school will encourage school attendance and working for these individuals. Changes in the 30 and 1/3 deduction will encourage working. Moving the Family Alternatives Diversion Program and relocation assistance to topical regulations will comply with KRS Chapter 13A requirements.

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

September 15, 1998

(1) **904 KAR 2:017**, Kentucky Works child care and supportive services.

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or one (1) person representing the administrative body or association, agree, in writing, to be present at the public hearing.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to supportive services is KRS 194.050(1); 205.200(2); 1998 Ky. Acts ch. 100, sec. 4, ch. 426, EO 98-731 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend the provisions for supportive services for Kentucky Works, the work program for the Kentucky Transitional Assistance Program (K-TAP). We intend to:

1. Replace the list of other supportive services in Section 10(2) with language that will allow for a wider range of necessary items or services needed for participation in Kentucky Works activities, as determined by the cabinet.

2. Increase the amount allowed for other supportive services from \$400 to \$600 in a 12 month period.

3. Increase car repair allowance from \$300 to \$500 in a twelve (12) month period and expand the scope of what can be purchased.

4. As a pilot project with possible statewide implementation, pay incentives for attendance and academic progress for children and working K-TAP adults in a school setting.

5. Add as a supportive service job retention services available for post-K-TAP recipients who lost assistance as a result of employment.

6. As an incentive to go to work and report wages, pay job retention bonus to recipients gaining full time unsubsidized employment (30+ hours per week at no less than the federal minimum wage) and keeping a job for at least 90 days.

7. Amend the PA-33, "Verification of Education/Training, Child Care, and Transportation".

8. Make amendments to conform with language in 1998 Ky. Acts ch. 100, regarding welfare reform, and 1998 Ky. Acts ch. 426 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations.

(d) The benefits expected from administrative regulation are: The cabinet will have more flexibility in approving the purchase of the types of services or items needed for participation for Kentucky Works participants. The allowable amount and the scope of services for car repairs will be expanded. Paying incentives will encourage recipients of K-TAP to remain in school or stay employed.

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

August 17, 1998

(1) **904 KAR 2:116.** Home Energy Assistance Program.

(2) Cabinet for Families and Children, Department for Community Based 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 9 a.m., October 30, 1998, in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Family Support, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to energy assistance is KRS 194.050 and 42 USC 8621 et. seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 904 KAR 904 KAR 2:116, Home Energy Assistance Program. The proposed administrative regulation is necessary to revise income guidelines and crisis eligibility, and to discontinue emergency home heating repairs and replacement.

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(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This amendment to the regulation is necessary so the regulation is in agreement with the Low Income Home Energy Assistance Program Block Grant Application.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring it in compliance with the cabinet's Low Income Home Energy Assistance Program plan, which was approved by the Special Subcommittee on Energy and which is to be submitted to the U.S. Department of Health and Human Services prior to October 1, 1998. By bringing this regulation in compliance with the plan, loss of federal funds will be prevented.

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

September 15, 1998

(1) **904 KAR 2:370.** Technical requirements for Kentucky Works.

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to KRS 194.050(1); 205.200(2); 1998 Ky. Acts, ch. 100, sec. 4; 1998 Ky. Acts, ch. 426; EO 98-731 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend the technical requirements for Kentucky Works, the work program for the Kentucky Transitional Assistance Program (K-TAP). The cabinet intends to:

1. Increase the minimum number of hours an adult receiving K-TAP is required to participate in work activities to comply with the federally mandated change in 42 USC 607(c). The proposed amendment will increase the required minimum number of hours per week from 20 hours to 25 hours per week until September 30, 1999, and on or after October 1, 1999, to 30 hours per week. The only parent or caretaker relative in the family with a child who has not attained six (6) years in age will be required to participate for a minimum of 20 hours of week;

2. Clarify that the required minimum hours of work participation for two parent households that contain a parent who meets the deprivation of incapacity, pursuant to 904 KAR 2:006, is the same as one (1) parent households.

3. Amend the good cause criteria in Section 6 to include additional good cause reasons that reflect situations that would prevent an individual from going to work, to comply with criteria in 904 KAR 2:016, Section 4(4);

4. Make amendments to conform with language in 1998 Ky. Acts ch. 100 regarding welfare reform, and 1998 Ky. Acts ch. 426 and EO 98-731 regarding reorganization of the Cabinet for Families and Children;

5. Change the penalty for a family that contains a parent or caretaker relative who voluntarily quits or refuses to take a job or reduces the number of hours worked, without good cause.

6. Amend forms to:

- a. Add the word "training" to the forms used for the Work Experience Training Program to reflect policy;

- b. Remove "Child Care" from the PA-33 since it is no longer required for child care services;

- c. Amend PA-219; KW-105; KW-200; KW-202; KW-204; and KW-205 to reflect previous policy changes now incorporated in these forms and to change the name of the department.

7. Change references to "work experience programs" to "work experience training programs".

8. Add as an additional component to the list in Section 2(2)(c), "Participation in other activities approved by the cabinet".

9. Remove from paragraph (c), Section 6 the cross reference to 904 KAR 2:006, Section 8 for deprivation based on incapacity and require referrals to the Department of Vocational Rehabilitation when disability is claimed as a good cause for not participating in Kentucky Works activities.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program under 42 USC 601 et seq. called the Kentucky Transitional Assistance Program. This administrative regulation sets forth the technical requirements of the Kentucky Works Program participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring Kentucky in compliance with the federally mandated number of hours the adult is required to participate in work activities found in 42 USC 607(c). Good cause reasons will reflect situations that would prevent an individual from going to work.

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

September 15, 1998

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(1) **904 KAR 2:500**, Family Alternatives Diversion Program (FAD).

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Family Alternatives Diversion Program is KRS 194.050(1), 205.010, 205.200(2), 42 USC 601 et seq., 1397, 1998 Ky. Acts ch. 426 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new regulation 904 KAR 2:500, Family Alternatives Diversion (FAD) program. This administrative regulation is necessary to:

1. Transfer information regarding the Family Alternatives Diversion Program from 904 KAR 2:016 to a new topical regulation due to the subject matter.

2. Change the duration of the application period from 12 months to 30 days.

3. Add another potentially eligible group for FAD following discontinuance of K-TAP. Authorize benefits up to a total of \$1,500 for a 3 month period following discontinuance from K-TAP due to earnings or at the request of the parent because of earnings; contains a parent who is currently employed when services are requested; has total gross income under 200 percent of federal poverty level; and needs a service that would stabilize the family and allow them to maintain self-sufficiency through employment.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive money grants be prescribed by administrative regulations.

(d) The benefits expected from administrative regulation are: The new administrative regulation will transfer the Family Alternatives Diversion (FAD) program to a new topical regulation. Adding another eligible group to FAD will assist families to maintain self-sufficiency who are discontinued from K-TAP as a result of employment.

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

September 15, 1998

(1) **904 KAR 2:510**, Relocation Assistance Program.

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program

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(K-TAP) is KRS 194.050(1), 205.010, 205.200(2), 42 USC 601 et seq., 1998 Ky. Acts ch. 100, sec. 4, 426, and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new regulation, 904 KAR 2:510, Relocation Assistance Program. This administrative regulation is necessary to:

1. Transfer information regarding the Relocation Assistance Program from 904 KAR 2:016 to a new topical regulation due to the subject matter.

2. Allow a relocation assistance payment to an eligible family who needs to move to more affordable housing due to a rent increase as the result of the parent gaining employment.

3. Allow a relocation assistance payment to an eligible family who needs to move to escape a domestic violence situation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive money grants be prescribed by administrative regulations.

(d) The benefits expected from the administrative regulation are: Relocation assistance will be available to eligible families who need to move to more affordable housing or move to escape domestic violence situations.

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

September 15, 1998

(1) **905 KAR 1:050**, Approval of subsidies.

(2) Cabinet for Families and Children, Department for Community Based 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 October 30, 1998 at 9 a.m., in the 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 one (1) person representing 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 calendar days prior to October 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: Judy Trigg, Cabinet 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).

(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 Community Based Services, Division of Policy Development, CHR Building, 3rd Floor West, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the approval of adoption assistance are KRS 199.555, 199.557, and 42 USC 673, 1998 Ky. Acts ch. 426, and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will:

1. Change the wording of "subsidy" to adoption assistance in order to maintain consistency throughout the regulation;

2. Adjust the age of majority from 18 years of age to 19 years of age when a child is enrolled in a state or federal high school educational setting;

3. Specify the age of majority of disabled children as 21 when they receive supplemental security income and are enrolled in a state or federal educational program;

4. Clarify that adoption assistance may not exceed the family foster care rates including medically fragile and family treatment home foster care rates.

5. Clarify the description of the special needs child to include children who have a background of mental illness which is hereditary in nature and is documented by a genetic evaluation;

6. Complete housekeeping changes to comply with EO 98-731.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is required by KRS 199.555 and 199.557. It serves to set forth guidelines for the implementation of the law on state funded adoption assistance and federal Title IV-E adoption assistance.

(d) The benefits expected from this administrative regulation are: Adoption subsidy eligibility is extended for the above mentioned qualified children. The additional rate distinctions will encourage more families to adopt medically fragile and special needs children, which will result in a greater number of homes for children awaiting placement.

(e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services**

September 15, 1998

(1) **907 KAR 1:102**, Advanced registered nurse practitioner 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 October 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort,

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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 October 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to advanced registered nurse practitioners are KRS 205.520 and HB 132 of 1998 GA.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:102 to combine 907 KAR 1:200, 1:406, 1:408, and 1:476 into 907 KAR 1:102; establish guidelines to require the attending ARNP verify recipient eligibility; make changes due to Advanced Registered Nurse Practitioners having prescriptive authority pursuant to KRS 314.011; incorporate policy related to pharmacy services; make formatting changes as a result of HB 132 of 1998 GA and KRS Chapter 13A; update current procedures; incorporate procedure codes, forms and policy presently used by the Early Periodic Screening and Diagnostic Testing (EPSDT) Program for screening services; clarify policy relating to pain management; incorporate new policy related to new coverage of certain injectable prescriptions and implant procedures; establish determinants for limiting the frequency of standard treadmill stress testing; amend policy for coverage of laboratory procedures in the ARNP office; incorporate new policy to include coverage of an evaluation and management service in conjunction with chemotherapy administration; incorporate policy to allow coverage for newborn hospital discharge evaluation when billed to the mother's Medical Assistance Identification #; and make minor clarifications to current policy.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 907 KAR 1:102 administrative regulation sets forth the provisions relating to advanced registered nurse practitioner services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: Combining the advanced registered nurse practitioner, nurse mid-wife services, and nurse anesthetist services manuals into the advanced practice nurse services manual to eliminate duplication of policy and ease of administration. The advanced registered nurse practitioners are able to prescribe medications pursuant to KRS 314.011; therefore, the promulgation of these regulations will permit the reimbursement for these services.

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

September 15, 1998

(1) **907 KAR 1:104**, Payments for advanced registered nurse practitioner 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 October 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 October 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to advanced registered nurse practitioners are KRS 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 1:104 to combine 907 KAR 1:210 into 907 KAR 1:104 for ease of administration; make changes due to advanced registered nurse practitioners having prescriptive authority pursuant to KRS 314.011; make formatting changes as a result of HB 132 of 1998 GA and KRS Chapter 13A; incorporate reim-

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bursement policy related to new coverage of certain injectable prescriptions, family planning and implant procedures; incorporate new reimbursement rates for EPSDT screening procedures; and make minor reimbursement policy clarifications.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 907 KAR 1:104 administrative regulation sets forth the method for determining amounts payable by the cabinet for advanced registered nurse practitioners (ARNP).

(d) The benefits expected from administrative regulation are: combining the advanced registered nurse practitioner, nurse mid-wife services, and nurse anesthetist services manuals into the advanced practice nurse services manual to eliminate duplication of policy and ease of administration. The advanced registered nurse practitioners are able to prescribe medications pursuant to KRS 314.011; therefore, the promulgation of this regulation will permit the reimbursement for these services.

(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.

September 15, 1998

(1) **907 KAR 1:407**, Repeal of 907 KAR 1:200; 907 KAR 1:210; 907 KAR 1:406; 907 KAR 1:408; and 907 KAR 1:476.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 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 October 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to advanced registered nurse practitioners are KRS 205.520 and HB 132 of 1998 GA.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:200; 907 KAR 1:210; 907 KAR 1:406; 907 KAR 1:408; and 907 KAR 1:476, which are no longer needed because the information contained in these manuals will be included in the new ARNP Services Manual incorporated in regulation 907 KAR 1:102.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 907 KAR 1:407 administrative regulation repeals 907 KAR 1:200; 907 KAR 1:210; 907 KAR 1:406; 907 KAR 1:408; and 907 KAR 1:476.

(d) The benefits expected from administrative regulation are: combining the advanced registered nurse practitioner, nurse mid-wife services, and nurse anesthetist services manuals into the advanced practice nurse services manual to eliminate duplication of policy and ease of administration.

(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.

September 15, 1998

(1) **907 KAR 1:635**, Conditions of coverage for the Kentucky Hospital Care Program.

(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 October 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 October 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 ac-

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cordance 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 conditions of coverage for the Kentucky Hospital Care Program are KRS 205.640, HB 132 and HB 785 of the 1998 GA.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will increase the income limit from 100% of the federal poverty level to 150%; limit a single determination of eligibility for physical therapy services to six months; include state supplementation payments as income; include persons with health insurance, including Medicare, as an ineligible group; include nonemergency care as a benefit; update the KHCP manual and make minor policy clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to the eligibility requirements and benefits for recipients under KHCP and incorporates provisions included in HB 785.

(d) The benefits expected from administrative regulation are: To provide hospital services to individuals with income between 100% and 150% of the federal poverty level; to remove outdated material and to clarify policy.

(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

September 15, 1998

(1) **907 KAR 1:755**, Preadmission Screening and Resident Review (PASRR) Program.

(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 October 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 October 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 payment for nursing facility 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 comply with federal mandates under 42 USC 1396r and HCFA directives and will amend the appeal process for recipients in nursing facilities so that, if requested, Medicaid reimbursement for nursing facility services continues pending a hearing decision.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the program requirements and payment provisions for preadmission screening and resident reviews (PASRR).

(d) The benefits expected from administrative regulation are:

1. Assures compliance with 42 USC 1396r(6) and sets the program and policy requirements for preadmission screening and resident review program. In addition, it clarifies that failure to perform an annual review will no longer be grounds to deny Medicaid payment.

2. The revision to the appeal process will make the process consistent with KRS Chapter 13B, 907 KAR 1:563, clarify policy regarding the need for nursing facility services and specialized services for mental retardation and to ensure that Medicaid reimbursement is continued for recipients during the hearing process.

3. Defining a "significant change" will assure that reviews are performed in compliance with federal directives.

(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.

September 15, 1998

(1) **907 KAR 3:005**, Physicians' services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 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 October 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to physician services are 42 CFR 440.50; 42 CFR 447 Subpart B; 42 USC 1396a-d; 1396s; and HB 132 of 1998 GA.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:005 to make formatting changes as a result of HB 132 of 1998 GA and KRS Chapter 13A; update current procedures; make minor policy clarifications; to clarify policy relating to pain management; incorporate new policy related to coverage of private source vaccines; incorporate procedure codes, forms and policy presently used by the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program for screening services; amend policy related to physician provider enrollment regarding MAPs 343, 343A, 343B, 344, and 347; amend policy related to services and reimbursement to attending physicians in a teaching hospital; incorporate new policy related to pharmacy services; establish determinants for limiting the frequency of standard treadmill stress testing; amend policy regarding coverage of laboratory procedures performed in the physician's office; incorporate new policy to include coverage of an outpatient evaluation service in conjunction with chemotherapy administration; establish guidelines which require the attending physician to verify recipient eligibility; and incorporate policy to allow for coverage for newborn hospital discharge evaluation.

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

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

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

September 15, 1998

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 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 October 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 Financial Management and Analysis, 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 reimbursement for physician services are 42 CFR 440.50; 447 Subpart B; 42 USC 1396a-d; 1396s; and HB 132 of 1998 GA.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:010 to comply with provisions of HB 132 of 1998 GA and KRS Chapter 13A; incorporate reimbursement criteria presently used by the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program for screening services; amend policy related to reimbursement of private source vaccines; and make minor reimbursement policy clarifications.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 907 KAR 3:010 administrative regulation sets forth the rates and conditions upon which payment shall be made by the Medicaid Program to physicians on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: The facilitation of operations between Kentucky Medicaid and participating physicians through the use of an updated reimbursement schedule.

(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.

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September 15, 1998

(1) **907 KAR 3:080**, Program of All-inclusive Care for the Elderly (PACE).

(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 October 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 October 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 3:080 are KRS 194.050, 205.520, 205.6338, 42 USC 1296u-4, and Ky. Acts 426, sec 4(3).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will establish a program of All-inclusive Care for the Elderly (PACE) Pilot Project as an optional state service under the Kentucky Medicaid Program. The regulation will establish the definitions, provider qualifications, participant eligibility criteria, participant exclusions, covered services, reimbursement methodology and grievance and appeal rights.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth participant eligibility criteria, participant exclusions, provider qualifications, reimbursement methodology, covered services, and grievance and appeal rights for the Program of All-inclusive Care for the Elderly.

(d) The benefits expected from administrative regulation are: To provide for cost containment, elimination of service fragmentation, quality, access and continuity of care for the elderly.

(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.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
904 KAR 2:006E

The administrative regulation 904 KAR 2:006E, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP), implements the technical requirements for the Kentucky Transitional Assistance Program. 42 USC 607(c) mandates states to increase the minimum number of hours of participation in work activities from twenty (20) to twenty-five (25) hours per week for adult K-TAP recipients beginning October 1, 1998. The Cabinet for Families and Children is required to include this mandatory provision of 42 USC 607(c) in the Title IV-A State Plan and 904 KAR 2:370E. This emergency administrative regulation is needed to comply with this mandate by removing the twenty (20) hour restriction from the definition of "work". Noncompliance of this federal mandate will jeopardize funding received from the TANF Block Grant. Therefore, in order to be in compliance with the amended Title IV-A State Plan and the deadline imposed by 42 USC 607(c), this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:006. Due to the coordination with the amended Title IV-A State Plan and the TANF Block Grant application, both effective October 1, 1998, an ordinary administrative regulation would not allow sufficient time to meet the federally mandated change for October 1, 1998. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

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

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, 8 USC 1611-1645, 42 USC 601 et seq., [602]; "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance; PL 104-208]

STATUTORY AUTHORITY: KRS 194.050(1), 205.010, 205.200(2), (3), 42 USC 601 et seq., 1998 Ky. Acts ch. 100 sec. 4, ch. 426, EO 98-731 [EO 96-862]

EFFECTIVE: September 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program, [of Aid to Families with Dependent Children, now named] the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants [from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program,] be prescribed by administrative regulations in conformity with 42 USC

602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support enforcement activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

- (a) Physical acts that resulted in, or threatened to result in, physical injury to the individual;
 - (b) Sexual abuse;
 - (c) Sexual activity involving a dependent child;
 - (d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
 - (e) Threats of, or attempts at, physical or sexual abuse;
 - (f) Mental abuse; or
 - (g) Neglect or deprivation of medical care.
- (2) "Cabinet" means the Cabinet for Families and Children.

(3) "Child" means an individual:

- 1. Age fifteen (15) or under;
 - 2. Age sixteen (16) or seventeen (17) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school;
 - 3. Age eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study:
 - a. Before reaching age nineteen (19); or
 - b. During the month of the 19th birthday; or
 - 4. Under age eighteen (18) and a high school graduate.
- (4) [(3)] "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

(5) [(4)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children who are deprived of parental support or care due to:

- (a) Death, continued voluntary or involuntary absence of a parent;
- (b) Physical or mental incapacity of one (1) parent when both parents are in the home; or
- (c) Unemployment of at least one (1) parent when both parents are in the home.

(6) [(5)] "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(7) [(6)] "Minor teenage parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married or is married and not living with the spouse; and
- (c) Has a minor child in the applicant's or recipient's care.

(8) [(7)] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(9) [(8)] "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP benefits based on the deprivation of unemployment.

(10) [(9)] "Prior labor market attachment (PLMA)" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP benefits based on the deprivation of unemployment.

(11) [(10)] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

- (a) Lawfully admitted for permanent residence under 8 USC 1101 et seq.;

- (b) Granted asylum under 8 USC 1158;
- (c) A refugee who is admitted to the United States under 8 USC 1157;
- (d) Paroled into the United States under 8 USC 1182(d)(5) for a period of at least one (1) year;
- (e) An alien whose deportation is being withheld under 8 USC 1253(h);
- (f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or
- (g) Lawfully residing in any state and is:
 1. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;
 2. On active duty other than active duty for training in the Armed Forces of the United States; or
 3. The spouse or unmarried dependent child of an individual described in paragraph (g)1 or 2 of this subsection;
- (h) Battered or subjected to extreme cruelty in the United States by:
 1. A spouse or a parent; or
 2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or
- (i) A child of an alien who has been battered or subjected to extreme cruelty in the United States by:
 1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or
 2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to the battery or cruelty.
- (j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:
 1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
 2. There is a substantial connection between the battery or cruelty and the need for the benefit; and
 3. The alien has been approved or has a petition pending for:
 - a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);
 - b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or
 - c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).
- (12) ~~[(11)]~~ "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.
- (13) ~~[(12)]~~ "Striker" means an employed individual who is participating in:
 - (a) A work stoppage;
 - (b) A concerted slowdown of work; or
 - (c) An interruption of operations at his place of employment.
- (14) ~~[(13)]~~ "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:
 - (a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;
 - (b) 42 USC 1382e; or
 - (c) 42 USC 1382.
- (15) ~~[(14)]~~ "Unemployed parent" (UP) case means K-TAP benefits paid to a family when both parents are in the home and at least one (1) parent is unemployed.
- (16) ~~[(15)]~~ "Work" means participation in the following:
 - (a) ~~[Except for two (2) parent cases, for all families work means at least twenty (20) hours or more per week of:~~
 - ~~1. Unsubsidized employment;~~
 - ~~2. Subsidized employment;~~
 - ~~3. Work experience training;~~
 - ~~4. Community services; or~~
 - ~~5. Participation in work programs established by the cabinet.~~
 - ~~(b) For two (2) parent cases work means at least thirty-five (35) hours or more per week of:~~
 - ~~1. Unsubsidized employment;~~

- 2. Subsidized employment;
- 3. Work experience training;
- 4. Community services; or
- 5. Participation in work programs established by the cabinet.]

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

- (2) Verification of school attendance shall be required for:
 - (a) A child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or
 - (b) A minor teenage parent pursuant to Section 18(1) of this administrative regulation.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount for K-TAP.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

- (a) Official school or training program vacation;
- (b) Illness;
- (c) Convalescence; or
- (d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) Each person included in the K-TAP case shall furnish his Social Security number or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be anyone who:

- (a) Is living in the state voluntarily and not for a temporary purpose; or
- (b) Entered the state with a job commitment or seeking employment; and
- (c) Is not receiving assistance funded by a block grant program under 42 USC 601 et seq. from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to United States citizens.

(b) A qualified alien, as defined in Section 1~~[(10)]~~ of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, as defined in Section 1~~[(10)]~~ of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions apply to this provision:

1. An alien who is admitted to the United States as a refugee under 8 USC 1157.
2. An alien who is granted asylum under 8 USC 1158.
3. An alien whose deportation is being withheld under 8 USC 1253(h); or
4. An alien who is lawfully residing in Kentucky and is:
 - a. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;
 - b. On active duty other than active duty for training in the Armed Forces of the United States; or
 - c. The spouse or unmarried dependent child of an individual described in clause a or b of this subparagraph.
- (d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care as specified in Section 1~~(5)~~ ~~[(4)]~~ of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion:

a. Of thirty (30) days or more if:

(i) The parent voluntarily leaves; or

(ii) The parent refuses to accept the child into his home; or

b. Of less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with relatives following a finding by the ~~cabinet~~ [Department for Social Services] that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation of seven (7) days or more; or

6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity exists in a case when the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment which was:

1. Present at the time of application; and
2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period in which the claimant is undergoing:

1. Planned diagnostic studies; or
2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability,

illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

a. Field staff if the following criteria are met:

1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Community Based Services [Social Insurance]; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury which requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. Periods longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) Factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;
2. Employment history;
3. Vocational training;
4. Educational background; and
5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding

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available employment opportunities shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent when both parents are in the home shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a PLMA.

(2) The determination of the PWE shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

(b) If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) PLMA shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1[(9)] of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in the Kentucky Works Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining PLMA. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 904 KAR 2:370, Section 4(3); or

2. Subject to Kentucky Works, as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for K-TAP a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) A relative of the half-blood;

(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;

(5) Any person listed in subsections (1) through (4) of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For K-TAP eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet [Department for Social Services]; or

(e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visits with friends or relatives.

(9) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

(a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

(b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(10) If a specified relative fails to notify the agency of a thirty (30) consecutive day or more absence of the child for a reason other than

one (1) of the good cause reasons listed in subsection (8) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 of 904 KAR 2:016.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity as set forth in this administrative regulation shall be used only to establish relationship for K-TAP eligibility and shall be limited to situations in which the following types of evidence are present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal documents such as:
 - 1. Hospital records;
 - 2. Juvenile court records;
 - 3. Wills; and
 - 4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
- (d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
 - 1. School records;
 - 2. Bible records;
 - 3. Immigration records;
 - 4. Naturalization records;
 - 5. Church documents, such as baptismal certificates;
 - 6. Passport;
 - 7. Military records;
 - 8. U.S. Census records; or
 - 9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

- (a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
 - (b) The parent or caretaker relative provides a notarized statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
- (3) Presence of the notarized statement or affidavit specified in subsection (2)(b) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receive SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 904 KAR 2:370, Section 4(3).

Section 15. Kentucky Works. The technical requirements for participation in the Kentucky Works Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities.

(1) The Department for Community Based Services [Social Insurance] shall attempt to secure parental support, and if necessary establish paternity, for children receiving K-TAP based on the following voluntary absence deprivation factors:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities. This includes:

- (a) Identifying the noncustodial parent or obligor;
 - (b) Providing information to assist in the location of the noncustodial parent or obligor;
 - (c) Establishing paternity; and
 - (d) Forwarding child support payments received to the agency.
- (3) The Cabinet for Families and Children shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

- (a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
- (b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or
- (c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (e) The applicant or recipient is being assisted by a public or licensed private social service agency:

- 1. To resolve whether to keep the child or release him for adoption; and
- 2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes the following:

- 1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;
 - 2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;
 - 3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the non-custodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;
 - 4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or
 - 5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.
- (b) In each good cause determination based upon anticipation of

serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;
 2. The emotional health history of the individual;
 3. The extent and probable duration of the individual's emotional impairment; and
 4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.
- (c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:
1. The agency shall conduct an investigation if it is believed that:
 - a. Corroborative evidence is not available; and
 - b. The claim is credible without corroborative evidence.
 2. If the agency conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.
 3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:
 - a. Obtain permission for the contact; or
 - b. To enable the applicant or recipient to:
- (i) Present additional evidence or information so that such contact is unnecessary;
- (ii) Withdraw the application for assistance or request discontinuance of K-TAP; or
- (iii) Have the good cause claim denied.
- (6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:
- (a) Document the case;
 - (b) Determine that:
 1. Good cause exists and support activities cannot be initiated without endangering:
 - a. The best interests of the child; or
 - b. The physical or emotional health of the child or the relative; or
 2. Good cause does not exist.
 - (c) Advise the applicant or recipient in writing of the result of the good cause claim determination; and
 - (d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.
- (7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:
- (a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 904 KAR 2:016; and
 - (b) The agency shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.
- (8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the agency shall:
- (a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;
 - (b) Remove the protective payee from the case; and
 - (c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If a PWE or second parent in an UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or second parent shall have his needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent

shall participate in educational activities directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the minor teenage parent:

(a) Has a minor child at least twelve (12) weeks of age in his care; and

(b) Has not completed a high school education (or its equivalent).

(2) Except as provided in subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative as described in Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if:

(a) The minor teenage parent does not have:

1. A parent, legal guardian or appropriate adult relative as described in Section 10 of this administrative regulation who is living or whose whereabouts are known; or

2. A living parent, legal guardian, or other appropriate adult relative as described in Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative as described in Section 10 of this administrative regulation; or

(b) The cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if:

(a) The cabinet determines living in the place of residence maintained by the parent, legal guardian, or adult relative as described in Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs and concerns of the minor child; or

(b) The cabinet determines the minor teenage parent's current living arrangement is appropriate.

(5) If circumstances change and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with provisions found in Section 18 of this administrative regulation, payments to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative as described in Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, as defined by Section 1 of 904 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded under 42 USC 601 et seq., whether or not consecutive.

(2) A month or months of assistance received by an otherwise

eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

(a) If the benefit group contains an adult who is battered or subjected to extreme cruelty pursuant to Section 23 of this administrative regulation; or

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 904 KAR 2:050.

(3) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty;

(b) Has a physical or mental disability prohibiting work as determined by the cabinet;

(c) Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or

(d) Is a grandparent caring for an eligible child who would otherwise be placed in foster care.

(4) If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.

(5) Each month of participation in the wage supplementation component of Kentucky Works, pursuant to 904 KAR 2:370, Section 2 shall count toward the sixty (60) month lifetime limit.

(6) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in approved work activities, if available, as defined in Section 1(16) [(15)] of this administrative regulation.

(7) Time limitations shall apply to a sanctioned or penalized individual as defined in 904 KAR 2:016, Section 1.

Section 20. Receiving Assistance in Two (2) or More States. K-TAP assistance shall be denied for ten (10) years to a person who has:

(1) Been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states:

(a) Under a program funded under:

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) For benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for any months beginning after the granting of a pardon by the President of the United States with respect to the conduct which was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not be eligible for K-TAP benefits.

(2) Each individual applying for K-TAP benefits shall be required to state in writing whether the individual or any member of the household has been convicted of a crime described in subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, or an individual who is at risk of further domestic violence, as determined by the cabinet, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 904 KAR 2:370.

Section 24. Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

(2) The parent or caretaker relative shall be sanctioned, as defined in 904 KAR 2:016, Section 1, for failure to maintain current immunizations.

Section 25. ~~Incorporation [Material Incorporated]~~ by Reference. (1) ~~The following material is incorporated by reference: [Forms necessary to establish technical eligibility requirements for the K-TAP program; with the exception of Kentucky Works participation, are being incorporated. These forms include:]~~

(a) PA.1C Supplement D, "Qualifying Parent Fact Sheet, edition 5/97";

(b) PA-14, "Declaration of citizenship or Alien Status, edition 8/97";

(c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97";

(d) PA-121, "Good Cause Claim/Determination, edition 8/97";

(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 2/97";

(f) PA-219, "Kentucky Works Program Fact Sheet, edition 4/97";

(g) CS-333, "Facts About the Child Support Enforcement Program, edition 5/97"; and

(h) CS-333.1, "Facts About the Right to Claim Good Cause, edition 5/97".

(2) ~~This material [incorporated by reference]~~ 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, [-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: September 8, 1998

FILED WITH LRC: September 14, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF Block Grant Program to implement the work requirements is called Kentucky Works. As of May 1998, there were a total of 50,490 basic K-TAP cases and 1,089 UP cases (unemployed parent cases), for a total of 51,579 K-TAP cases. In May 1998, there were approximately 37,807 adults in those cases. Adults receiving K-TAP are required to participate in work activities. The minimum number of hours an adult is required to participate in activities increases from

20 hours per week to 25 hours per week pursuant to 904 KAR 2:370E. To comply with this regulation we are removing the 20 hour restriction from the definition of "work".

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

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

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

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to participate in work activities, will have no additional compliance, reporting or paperwork requirements due to the amendments to this emergency regulation. K-TAP recipients in 20 hour per week work activities will be required to increase minimum participation by an additional five (5) hours per week. This increase will create minimum impact to the recipient.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

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

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

Adult K-TAP recipients must participate in work activities. Adults participating in Kentucky Works must participate for a minimum of 25 hours per week instead of 20 hours per week pursuant to 904 KAR 2:370E. To comply with 904 KAR 2:370E we are removing the 20 hour restriction from the definition of "work". We project minimal additional costs to the agency for recipients in 20 hour per week work activities to meet this 5 hour per week increase in participation. This minimal cost is for sending notices to recipients notifying them of the 25 hours per week instead of 20 hours per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the Biennium. However, if this increase in minimum participation in work activities is not implemented, participation rates will not met. A penalty resulting in a minimum of a 5 percent decrease in the TANF block grant (increasing by an additional 2 percent each year up to a maximum loss of 21 percent) would occur requiring state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5 percent penalty is \$18.0 million - maximum of 21 percent penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: Same as impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds would have to be used to cover a penalty. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

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

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state does not want to incur a penalty; therefore, the increased hours in required participation, effective October 1, 1998, will be met.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated minimum number of hours per week to participate in work activities requirements found in 42 USC 607(c). A parent or caretaker relative receiving assistance, is required to work or participate in approved work activities a minimum of 25 hours per week pursuant to 904 KAR 2:370E. To comply with this administrative regulation we are removing the 20 hour restriction from the definition of "work".

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

(c) If detrimental effect would result, explain detrimental effect: Title IV-A Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by 42 USC 601 et seq. If this increase in minimum participation in work activities is not implemented, participation rates will not be met resulting in penalties and loss of federal funds. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

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

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(c)

2. State compliance standards. 1998 Ky. Acts ch. 100

3. Minimum or uniform standards contained in the federal mandate. The minimum number of hours that a recipient must participate in work activities is set in 42 USC 607(c)

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

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

STATEMENT OF EMERGENCY 904 KAR 2:116E

This emergency administrative regulation is necessary to implement revised eligibility requirements and delete referrals to the Weatherization Assistance Program for heat systems evaluations and repairs. In order to receive funding for the Low Income Home Energy Assistance Program, states are required to submit a state plan by October 1, 1998. Due to reduced funding being available for the Weatherization Assistance Program, Kentucky is discontinuing emergency heat systems repairs/replacement. In order to comply with the deadline, to prevent the loss of federal funds and to serve only those households that are eligible, it is necessary that this administrative regulation be in effect prior to October 1, 1998. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

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

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

904 KAR 2:116E. Home Energy Assistance Program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq., 1998 Ky. Acts ch. 426, EO 98-731 [EO 96-862]

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.
EFFECTIVE: September 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has responsibility as prescribed by 42 USC 8621 et seq., as amended, to administer the Low Income Home Energy Assistance Program (LIHEAP) to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This administrative regulation states the eligibility and benefits criteria for heating assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "HEAP" means home energy assistance program and shall refer to the heating assistance portion of LIHEAP.

(8) "Heating season" means the period from October through April.

(9) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and purchase energy in common.

(10) "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(11) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(12) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider.

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide proof of all household income, the most recent heating bill or verification that heat is included in the rent and Social Security numbers for all household members for the agency to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income. (a) Gross household income shall be at or below 110% of the federal poverty income guidelines. [Relative to household size, the gross monthly income for the month prior to application shall be at or below the following:

Household Size	Gross Monthly Income	Household Size	Gross Monthly Income
1	\$685	7	\$2,093
2	\$920	8	\$2,328
3	\$1,155	9	\$2,563
4	\$1,389	10	\$2,798
5	\$1,624	11	\$3,033
6	\$1,859	12	\$3,268

For each additional family member, \$235 shall be added.

(b) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums;

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than \$1,500, or \$4,000 if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) The household shall be responsible for home heating costs or pay heating costs as an undesignated portion of the rent.

(4) Crisis component.

(a) Applicants shall meet the criteria in subsections (1), (2), and (3) of this section; and

(b) Be within four (4) days of running out of fuel if propane, fuel oil, coal, wood, or kerosene is the primary heat source; [Be without fuel if coal, wood, or kerosene is the primary heat source;] or

(c) A past-due or disconnect notice has been received if natural gas or electric is the primary heat source. [Be without fuel or disconnected from services within forty-eight (48) hours if propane, fuel oil, natural gas, or electric is the primary heat source; or

(d) Have an inoperable heating system; or]

(d) [(e)] For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for the six (6) primary heating fuels prior to the implementation of the subsidy component.

(c) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits. Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(d) Households living in federally assisted housing and receiving a utility allowance shall be eligible for benefits which shall be lower than benefits provided to all other households.

(2) Crisis component. Benefits to households, including households living in federally assisted housing, shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, space heaters, blankets or sleeping bags, or emergency shelter. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the

crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household may receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuels which is the cost for delivery of one (1) ton of coal, one (1) cord of wood, 100 gallons of propane, 100 gallons of fuel oil, 100 gallons of kerosene, or \$100 for natural gas and electric minus any copayment required of the household. ~~[determined prior to component implementation.]~~

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating which is the cost for delivery of one (1) ton of coal, one (1) cord of wood, 100 gallons of propane, 100 gallons of fuel oil, 100 gallons of kerosene, or \$100 for natural gas and electric minus any copayment required of the household. ~~[fuel as determined prior to component implementation.]~~

~~(d) A household that has a heating system that has become inoperable since the end of the previous heating season shall be referred to the local weatherization program to have its heating system evaluated and repaired if necessary.]~~

(d) ~~(e)~~ All eligible households, including those residing in subsidized housing, with an income at or above twenty-eight (28) percent of the poverty level shall make a copayment amount as a percentage of the amount needed to relieve the crisis. Those households residing in subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(e) ~~(f)~~ The copayment amount shall be based on the housing type and the household's percentage of poverty and shall be as follows:

Percent of Poverty	Copayment Percentage for Households Residing in Nonsubsidized Housing	Copayment Percentage for Households Residing in Subsidized Housing
0 - 27%	0%	0%
28 - 55%	10%	15%
56 - 83%	15%	20%
84 - 110%	20%	25%

Section 5. Benefit Delivery Methods. (1)(a) Payment under the subsidy component is authorized by a one (1) party check made payable to the household's energy provider or landlord if the cost of heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, direct cash payments shall not be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel or restoration, or continuation, of service; or to vendors supplying heaters, blankets, or emergency lodging.

Section 6. Right to a Fair Hearing. Any individual who has been denied assistance or whose application has not been acted upon with reasonable promptness has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Vendor Selection. (1) Subsidy component.

(a) The contracting agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The contracting agency shall place an advertisement for interested vendors in the local newspapers with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) All potential vendors shall provide the contracting agency with a fixed price in gallons for propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) Prior to being accepted as a vendor, the vendor shall sign an

agreement to comply with the requirements in Section 11 of this administrative regulation and agree to the following:

1. Allow contracting agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding HEAP for a period of three (3) years;

3. Provide information to the agency on any instances where the vendor may be aware that a household has been approved for benefits by misrepresentation of the household's situation;

4. Provide fuel as specified and at the price quoted;

5. Comply with the Equal Employment Opportunity standards; and

6. Comply with billing procedures established by the agency.

(e) Households shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of all approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For households with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within forty-eight (48) hours.

Section 8. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 9. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted within the time period the department designates in the annual LI-HEAP state plan as submitted to the federal government.

(b) Applications for the crisis component shall be accepted beginning on the date specified in the annual LIHEAP state plan and ending by March 31, or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation if additional federal funds are made available.

Section 10. Allocation of Funds. (1) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(2) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide eligible population at or below 100 percent of the poverty level ~~[share of the nonduplicated households assisted in the 1994 crisis component]~~. \$400,000 of the crisis benefit funds shall be identified as contingency funds and allocated to agencies as needed.

~~(3) [Each agency shall reserve ten (10) percent of the allocation under subsection (2) of this section to assure that funds are available until April 30, to assist households who are without heat or will be disconnected from utility services within forty-eight (48) hours.]~~

~~(4) No less than \$25,000 shall be reserved for the Preventive Assistance Program [administered by the Department for Social Services] to assist families with an energy payment not to exceed \$300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.~~

Section 11. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

- (1) Reconnection of utilities and delivery of fuel during the crisis component shall be accomplished upon certification for payment;
- (2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;
- (3) HEAP recipients shall be treated the same as households not receiving benefits;
- (4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and
- (5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 4, 1998

FILED WITH LRC: September 15, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy Mobley, Interim Director

(1) Type and number of entities affected: The Home Energy Assistance Program will be comprised of two components, subsidy and crisis which will provide heating benefits to eligible low income households at or below 110% of the federal poverty level. The number of households affected by the program will be dependent upon the federal appropriation, which is being estimated at the same level as FFY 1998. If funding is the same as 1998, approximately 120,000 households will be assisted.

(2) Direct and indirect cost or savings to those affected:

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

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

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

1. First year following implementation: The HEAP service providers are required to accept applications, determine eligibility and benefit amounts, issue vouchers, reimburse vendors, solicit and approve vendors, submit reports to the contracting agency, and obtain an annual audit. These requirements will neither increase nor decrease the costs. Cost of the program is determined by the federal appropriation of LIHEAP; the cost of administration is relative to the allocation - not to exceed 10% of the grant. The contractor agency, Kentucky Association for Community Action, will monitor each subcontractor a minimum of one time during the duration of the HEAP program.

2. Second and subsequent years: The compliance, paperwork and reporting requirements for all subsequent years will be the same as the first year.

(3) Effects on the promulgating administrative body: The Department for Community Based Services shall be responsible for the overall administration of HEAP.

(a) Direct and indirect cost or savings: Up to 10% of available funds for HEAP, may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing cost or savings: There will not be any continuing costs or savings.

3. Additional factors increasing or decreasing costs: The Department for Community Based Services is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate

administration of energy assistance programs including audits. The Department for Community Based Services shall collect and analyze data on households receiving assistance and report such to the U.S. Department for Health and Human Services.

(4) Assessment of anticipated effect on state and local revenues: The HEAP shall have little impact upon state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds.

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

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

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects the plan for heating assistance contained in the Low Income Home Energy Assistance Block Grant which was subject to substantial public review and comment, a legislative review and public hearing. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funds for the 2 components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the State Plan.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of HEAP will have a positive effect on the public health and safety of the low income eligible population in that they will receive benefits to maintain a heating source, or will be assisted in having a heating source, gas or electric, turned back on during the heating season.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the public health of low-income families during the winter months could result if the program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If HEAP is not implemented, a number of individuals or households at or below 110% of the federal poverty level may experience severe health problems related to having insufficient heat during the winter; hypothermia and freezing to death could be possible.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication of HEAP.

(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. Federal statutes mandate that eligibility requirements be in a like manner on a statewide basis; therefore, tiering is prohibited.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect cities which own and operate utilities for heating.

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

4. How does this administrative regulation affect the local government or any service it provides? The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping

households to maintain service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, and 45 CFR 96.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. Outreach activities must be conducted to assure that eligible households, especially those having elderly, disabled, or young children under the age of 6 are made aware of HEAP assistance. The designation of local agencies administering similar low income energy assistance programs shall be given priority as service deliverers. The statute requires that owners and renters be treated equitably. The statute requires crisis assistance that is weather or supply related or related to other factors affecting the availability of residential energy until March 15. In addition, it is required that the highest level of assistance be provided to those households which have the lowest incomes and the highest energy costs in relation to household income and household size.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need is a liquid resources test of \$1,500, except that households with a catastrophic illness shall have a limitation on resources at \$4,000. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds. All eligible households, including those residing in subsidized housing, at or above 28% of the poverty level are required to make a co-payment as a percentage of the amount needed to relieve a crisis. Because they receive a utility allowance, subsidized house-holds are required to pay a higher copayment.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of available funds, it is necessary to target assistance to those households most in need and to require households to pay a small amount toward relieving a crisis.

STATEMENT OF EMERGENCY 904 KAR 2:370E

The administrative regulation 904 KAR 2:370E, Technical requirements for Kentucky Works, implements the technical requirements for the Kentucky Works Program. This emergency administrative regulation is needed to comply with 42 USC 607(c) which mandates states to increase the minimum number of hours of participation in work activities from twenty (20) to twenty-five (25) hours per week for adult K-TAP recipients beginning October 1, 1998. The Cabinet for Families and Children is required to include this mandatory provision of 42 USC 607(c) in the Title IV-A State Plan. Non-compliance of this federal mandate will jeopardize funding received from the TANF block grant. Therefore, in order to be in compliance with the amended Title IV-A State Plan and the deadline imposed by 42 USC 607(c), this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:370. Due to the coordination with the amended Title IV-A State Plan and the TANF Block grant application, both effective October 1, 1998, an ordinary administrative regulation would not allow sufficient time to meet the federally mandated change for October 1, 1998. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

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

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development

904 KAR 2:370E. Technical requirements for Kentucky Works.

RELATES TO: 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 205.200(2), 42 USC 601 et seq., 1998 Ky. Acts ch. 100 sec. 4, ch 426, EO 98-731 [EO 96-862]

EFFECTIVE: September 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.~~] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program, [~~of Aid to Families with Dependent Children, which is now~~] called the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. 1998 Ky. Acts ch. 100, sec. 4 [KRS 205.200(2)] requires that a work program for recipients of Kentucky Transitional Assistance Program [the conditions of eligibility to receive money grants from the Kentucky Transitional Assistance Program] be prescribed by administrative regulations [in conformity with 42 USC 601 et seq. and federal regulations]. This administrative regulation sets forth the technical requirements of the Kentucky Works Program participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

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

(3) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(4) "Conciliation" means a process in which participation problems in the Kentucky Works Program can be resolved.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

(6) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(7) "Vocational education" means a training program which prepares the individual for employment.

(8) "Wage supplementation" means a component in which employers hire participants and receive reimbursement from the cabinet for a portion of wages paid to the participant.

Section 2. Program Participation. (1) All adult and teenage parent Kentucky Transitional Assistance Program recipients shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation;

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

(a) [For] A one (1) parent household [~~a minimum of twenty (20) hours per week~~] shall be required to participate in a specific activity [activities] listed in paragraph (c) of this subsection no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Prior to October 1, 1998, twenty (20) hours per week; and

2. On or after October 1, 1998 through September 30, 1999, twenty-five (25) hours per week;

(b) [For] A two (2) parent household shall participate in a specific

activity no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

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

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

a. The family receives federally-funded child care assistance; and
b. An adult in the family is not disabled pursuant to 904 KAR 2:006; or

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

3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.

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

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service;

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

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

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

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

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

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy; and
- g. Adult education;

h. Wage supplementation, which shall be available in limited areas and shall expand into additional areas until statewide implementation is complete; and

i. Participation in work programs approved by the cabinet.

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

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

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with program participation requirements for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from work participation requirements shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or

2. Cumulative.

(3) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence or who is at risk of further domestic violence, as determined by the cabinet, compliance shall not be mandated.

(4) A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for any month if the recipient is:

(a) The only parent or caretaker relative in the family with a child who has not attended six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works listed in Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability;

(b) Other agencies shall assist in the assessment process as needed;

(c) The assessment shall include:

1. Consideration of basic skills;
2. Occupational skills; and
3. Concerns and other relevant factors.

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

- (a) An employment goal for the participant;
- (b) Services to be provided by the agency (including child care);
- (c) Activities to be undertaken by the recipient to achieve the employment goal; and

(d) Other needs of the family.

(3) An adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance as set forth in Section 1(11) of 904 KAR 2:016;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
- (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a Kentucky Works participant;

(b) At the request of a service provider; or

(c) When a situation is identified which could result in a penalty (as specified in Section 7 of this administrative regulation).

(2) The conciliation shall be conducted by the cabinet or contractor:

(a) During conciliation, the agency shall determine if additional services are needed to assist with Kentucky Works participation.

(b) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, "Conciliation Contract".

(c) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A (K-TAP) recipient shall be excused from penalties for failure to comply with the Kentucky Works Program, as specified in Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent caring for a child under age six (6) and child care is unavailable, as determined by the cabinet;

(b) Dependent care is not available for any incapacitated individ-

ual living in the same household as a dependent child;

(c) The individual is unable to engage in employment or training for mental or physical reasons as verified by the cabinet. Deprivation based on incapacity is determined according to 904 KAR 2:006, Section 8;

(d) Illness of another household member requiring the presence of the participant as documented by medical evidence or by reliable information from other sources as verified by the cabinet;

(e) The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;

(f) The agency determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(g) Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(h) Wage rates are decreased subsequent to acceptance of employment;

(i) The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize.

(2) The duration of good cause criteria may vary according to individual circumstances.

Section 7. Penalties. (1) When a Kentucky Transitional Assistance Program recipient fails to comply with the requirements of the Kentucky Works Program, he shall be subject to Kentucky Works and Kentucky Transitional Assistance Program penalties. Failure to comply shall be found when the participant:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in required activities, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of the Transitional Assessment Agreement, KW-202;

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

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

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

(e) Unless an exception in Section 4(3) of this administrative regulation applies, fails to register for work.

(2)(a) Except for requirements listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with Kentucky Works requirements without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception in Section 4(3) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

(b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or
2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

(c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with program requirements.

(d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after conciliation procedures are conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with

any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) Costs incurred by the training site agency because of participation in WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services [Social Insurance].

(4) A WEP participant shall not infringe upon the promotional opportunities of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
 - (b) Color;
 - (c) Religion;
 - (d) Sex;
 - (e) National origin;
 - (f) Age;
 - (g) Disability; or
 - (h) Political belief or affiliation;
- (6) A training site agency shall:

(a) Complete Department for Community Based Services [Social Insurance] questionnaires relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement such as a reduction of the:

1. Hours of nonovertime work;
2. Wages; or

3. Employment benefits;

(c) Comply with the Americans with Disabilities Act;

(d) Shall report a personnel problem to the departmental representative designated by department;

(e) Shall maintain accurate time and attendance records for each WEP participant;

(f) Verify time and attendance records for each WEP participant on Form PA-33, "Certification of Education or Training, Child Care and Transportation" that will be submitted by a WEP participant;

(g) Shall grant access for the Department for Community Based Services [Social Insurance] to the training site during working hours to counsel participants and to monitor the site;

(h) Shall immediately report an injury to the designated representative;

(i) Shall conduct investigations and submit reports upon the request of the Department for Community Based Services [Social Insurance];

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information, in any form, provided by or about a WEP participant who seeks or receives services under the Training Site Agreement;

(l) Hold the cabinet harmless from losses, claims, expenses, actions, causes of action, costs, damages, and obligations arising from a negligent act or omission of the training site agency, its agents, employees, licensees, invitees, or WEP participants that results in injury to a person, or damages or losses relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;
2. New tasks after mastery of each skill; and
3. Adequate participation instruction and supervision at all times.

(7) A training site agency shall:

(a) Provide participants a safe training place;

(b) Assure that if participants are engaged in activities that are not covered under the Occupational Safety and Health Act of 1970, as amended, they shall not be required or permitted to be trained, or receive services, in buildings, or surroundings, or under training conditions that are unsanitary, hazardous, or dangerous to the health and safety of participants; and

(c) Provide adequate material to complete each training activity in a safe environment;

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:

(a) Each of the conditions established by subsections (1) through (8) of this section; and

(b) The period covered by the agreement, including the number of hours of participation required each week.

Section 10. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for participation in the Kentucky Works Program are being incorporated. These forms include:]

(a) PA-33, "Certification of Education or Training, Child Care and Transportation, edition 4/97";

(b) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97";

(c) PA-218A, "New Chance Referral, edition 4/97";

(d) PA-219, "Kentucky Works Program Fact Sheet, edition 5/97";

(e) KW-105, "Kentucky Works Referral Form (Participant), edition 4/97";

(f) KW-200, "Kentucky Works Assessment Form, edition 4/97";

(g) KW-202, "K-TAP Transitional Assistance Agreement, edition 4/97";

(h) KW-204, "Conciliation Contact, edition 5/97";

(i) KW-205, "Conciliation Results, edition 5/97";

(j) KW-211, "Noncompliance Contact, edition 5/97";

(k) KW-240, "Work Experience Program-Participant Agreement, edition 1/98";

(l) KW-244, "WEP Work Site Agreement Amendment, edition 1/98";

(m) KW-241 "WEP Work Site Agreement, edition 2/98";

(n) KW-245 "Notice of WEP Discontinuance, edition 1/98";

(o) KW-246 "WEP Referral Form, edition 1/98".

(2) This material [incorporated by reference] 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, [-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: September 8, 1998

FILED WITH LRC: September 14, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF Block Grant Program to implement the work requirements is called Kentucky Works. As of May 1998, there were a total of 50,490 basic K-TAP cases and 1,089 UP cases (unemployed parent cases), for a total of 51,579 K-TAP cases. In May 1998, there were approximately 37,807 adults in those cases. Adults receiving K-TAP are required to participate in the Kentucky Works Program unless the recipient meets exemption criteria delineated in the administrative regulation. The number of hours an adult is required to participate in activities increases from a minimum of 20 hours per week to 25 hours per week. The minimum number of hours per week for an individual who is an only parent or caretaker relative in the family with a child who has not attained 6 years in age will remain at 20 hours per week.

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

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

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to comply with Kentucky Works provisions will have no additional compliance, reporting or paperwork requirements due to the amendments to this emergency regulation. K-TAP recipients participating in work activities for 20 hours per week will be required to increase minimum participation in work activities by an additional 5 hours per week. This increase should create minimum impact to the recipient.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

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

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

Beginning October 1, 1998, K-TAP recipients must participate in Kentucky Works activities for a minimum of 25 hours per week instead of 20 hours per week. We project minimal additional costs to the agency for recipients to meet this 5 hour per week increase in participation. This minimal costs is for sending notices to recipients notifying them of the 25 hours per week instead of 20 hours per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the Biennium. However, if participation rates are not met, a penalty resulting in a minimum of a 5% decrease in the TANF block grant (increasing by an additional 2% each year up to a maximum loss of 21%) and the requirement that state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5% penalty is \$18.0 million – maximum of 21% penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: See impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds would have to be used to cover a penalty. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

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

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state does not want to incur a penalty; therefore, the increased hours in required participation, effective October 1, 1998, will be met.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated minimum number of hours per week to participate in work activities requirements found in 42 USC 607(c). A parent or caretaker relative receiving assistance, is required to work or participate in approved work activities a minimum of 25 hours per week.

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

(c) If detrimental effect would result, explain detrimental effect: Title IV-A block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may

be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A State Plan as required by 42 USC 601 et seq. If this increase in minimum participation in work activities is not implemented, participation rates will not be met resulting in penalties and loss of federal funds. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

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

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

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(c)

2. State compliance standards. 1998 Ky. Acts ch. 100, sec. 4

3. Minimum or uniform standards contained in the federal mandate. The minimum number of hours that a recipient must participate in work activities is set in 42 USC 607(c).

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

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

STATEMENT OF EMERGENCY 907 KAR 1:635E

This emergency administrative regulation is being promulgated to provide Kentucky Hospital Care Program coverage to individuals with income up to 150% of the federal poverty level. This action must be taken on an emergency basis to insure the health and safety of the Commonwealth's indigent population by providing them hospital care. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Commonwealth's indigent population. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis

907 KAR 1:635E. Conditions of coverage for the Kentucky Hospital Care Program (KHCP).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.640, 1998 GA HB 785, HB 132

EFFECTIVE: September 1, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Kentucky Hospital Care Program (KHCP) [program], which is a program of hospital care for the indigent provided by Kentucky acute, psychiatric and rehabilitation hospitals participating in the Kentucky Medicaid Program. The cabinet is responsible for establishing eligibility guidelines for determinations of KHCP eligibility to be made by the hospitals. This administrative regulation sets forth provisions relating

to the eligibility requirements and benefits for recipients under KHCP.

Section 1. Definitions. (1) ~~["Family unit" means the parents, step-parents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child; if the minor parent, his child and the child's other parent, regardless of their marital status, are in the same household, they shall be considered a separate family unit from any other family unit in that household.~~

(2) ~~"Kentucky Hospital Care Program" (KHCP) is a program of [inpatient and outpatient] hospital care, [but excluding nonemergency care rendered in the emergency room,] for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.~~

(2) [(3)] "Minor child [children]" means an individual:

(a) ~~[individuals]~~ Under the age of twenty-one (21) living with a parent;

(b) ~~[-, or]~~ Under the age of eighteen (18) living with a legal guardian in the same household; or

(c) Meeting one (1) of the criteria established in paragraph (a) or (b) of this subsection (one (1) of the previously described children) attending college or a similar type of higher education facility.

(3) [(4)] "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(4) [(5)] "Self-support" means a demonstration by the minor child that he is paying more than fifty (50) percent of his living expenses, for example, [(t.e.;)] proof of wages versus expenditures for living expenses[-, etc-].

Section 2. ~~[KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated July 15, 1994, which describes the processes for determining KHCP eligibility, is incorporated by reference.~~

(2) ~~The KHCP Eligibility Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

(3) ~~A fee shall be charged for the KHCP Eligibility Manual not to exceed the approximate cost of copying and materials.~~

Section 3. Eligibility Requirements. (1) For the purpose of determining eligibility a family unit is comprised of the following:

(a) Parents, stepparents, their minor children and stepchildren living in the same household;

(b) Unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household;

(c) A child under age eighteen (18), legal guardian and the legal guardian's family living in the same household;

(d) A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child;

(e) A minor parent, his child and the child's other parent, regardless of their marital status, living in the same household shall be considered a separate family unit from any other family unit in that household; and

(f) A minor child living with a grandparent comprises a family unit and the grandparent comprises another family unit.

(2) For an individual or family unit to be KHCP eligible the following requirements shall be met:

(a) The individual or family unit shall be a resident(s) of Kentucky. ~~A transient individual [Transients-(individuals) traveling through but not residing in the state]-and non-U.S. citizens in visa status (i.e., visitors, students, etc-)] shall not be eligible for KHCP;~~

(b) ~~The individual's or family unit's income shall not exceed 150 [100] percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually [except for Medicaid recipients receiving additional days of coverage per hospital stay based on medical necessity determined in accordance with 907 KAR 1:012, Inpatient hospital services];~~

(c) The individual or family unit shall be encouraged to apply for

Medicaid at the local Department for Social Insurance office if potentially eligible; and

(d) Except for Medicaid recipients receiving additional days of coverage per hospital stay, a potential KHCP recipient receiving services on or after July 15, 1994 shall be required to apply for KHCP benefits by not later than thirty (30) days from the date of service or notification by the hospital of potential KHCP eligibility, whichever is later; and

(e) A potential KHCP recipient receiving services on or before June 30, 1994 shall be required to apply for KHCP services by August 15, 1994 or thirty (30) days from date of notification by the hospital of potential KHCP eligibility, whichever is later.

(3) A [(2) Any] Medicaid recipient receiving additional days of coverage per hospital stay, based on medical necessity determined in accordance with 907 KAR 1:012, shall be determined KHCP eligible without further verification; and an application shall not be required.

[(3) Individuals or families found eligible prior to July 1, 1993 for the Hospital Indigent Care Assurance Program for a period of time extending past July 1, 1993 shall be determined eligible for KHCP without further verification for that portion of the period of time extending past July 1, 1993.]

Section 3. Alien Eligibility Requirements. (1) An alien legally admitted to this country for permanent residence on or before August 22, 1996, is eligible to participate in KHCP.

(2) An alien admitted after August 22, 1996, who is a refugee, asylee, parolee, member of the United States Armed Forces, or a dependent of an active or retired member of the armed forces is eligible to participate in KHCP.

(3) An illegal, undocumented alien is eligible to participate if he has a life-threatening emergency condition.

(4) An alien who is admitted for permanent residence after August 22, 1996, who is not a parolee, refugee, asylee, member of the armed forces, retiree from the armed forces or a dependent of a member (retiree) of the armed forces, is eligible to participate in KHCP if he has a life-threatening emergency condition.

(5) Coverage shall not be provided for an individual specified in subsection (3) or (4) of this section for a transplant or a service related to a transplant.

(6) An alien who is admitted to the United States for a temporary stay, such as a student, tourist, business person or a person on a temporary work permit is not eligible to participate in KHCP.

Section 4. Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP:

(1) An individual [Individuals] within a correctional system, including an inmate of a jail, prison [(i.e., inmates of jails, prisons, etc.)];

(2) An individual [Individuals] in the custody of a unit of government which is responsible for coverage of the acute care needs of the individual [Individuals].

(3) With the exception of a child specified in 907 KAR 1:012, Section 2, a Medicaid recipient [recipients] who has [have] been decertified by the peer [utilization] review organization (PRO) for not meeting psychiatric level of care or medical necessity under EPSDT Special Services in accordance with 907 KAR 1:034;

(4) An individual who is covered by health insurance, including Part A Medicare. The hospital is responsible for determining if health insurance coverage exists. Policies which provide for a fixed number of dollars per day of hospitalization are not considered to be health insurance in a KHCP eligibility determination. [Individuals who receive ongoing Medicaid in any category including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).]

Section 5. Eligibility Periods. [The following provisions shall be applicable for eligibility periods:

(1) For inpatient hospital stays, each determination of eligibility shall be for the period of hospitalization.

(2) For major or minor outpatient procedures or services, a determination of eligibility shall be for the date or dates of service.] A single determination of eligibility shall be considered sufficient for a period not to exceed six (6) months. [prescribed course of outpatient treatment (for example, physical therapy) covering several days or weeks.]

[(3)] A retroactive determination of eligibility shall be completed for

inpatient hospital stays, and major or minor outpatient procedures or services for any period of time preceding the month of application. [No retroactive coverage shall be provided for a period of time prior to July 1, 1993.

(4) No retroactive coverage for individuals between the ages of twenty-two (22) through sixty-four (64) residing in a psychiatric facility shall be available for any period prior to July 15, 1994.]

Section 6. Income Considerations. Eligibility shall be determined by comparing the family unit's (or that of the individual not living with other family members) total annual gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's total annual gross income to 150 [100] percent of the official poverty income guidelines, the following policies shall be applied:

(1) Total annual gross income shall be based on income received during the twelve (12) months preceding the month of application with adjustments for projected changes in income as appropriate;

(2) Hospitals may require submission of tax returns, pay stubs, employer statements, and similar documents to verify income;

(3) Upon verification that income will increase or decrease, the anticipated income shall be used;

(4) The gross income or adjusted gross income for self-employment shall be used; the adjusted gross income shall be determined by allowing work expense deductions that are directly related to producing the goods or services and without which the goods or services could not be produced;

(5) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate KHCP family size;

(6) Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(7) A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(8) A grandparent's income shall not be considered for grandchildren living with the grandparent [(but not also living with the minor parent)] unless the grandparent is the legal guardian; and

(9) Income from a common law spouse living in the same household shall be considered. (Common law marriages shall be recognized if that marriage was recognized in other states or the couple has held themselves out to that community as married); and

(10) State supplemental payments to individuals in personal care homes shall be excluded from consideration].

Section 7. Resource Considerations. (1) [Resources shall not be considered in determining KHCP eligibility for the period of July 1, 1993, through January 31, 1994.

(2) Effective for determinations of eligibility for the period beginning on February 1, 1994, and ending on April 15, 1994 the following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments, but not including real or personal property including jewelry, household goods, clothing, buildings, land, businesses, and professional practices) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member.

(3) Effective for determinations of eligibility for periods beginning on or after April 16, 1994] The following provisions shall be applicable with regard to the computation of allowable resources:

(a) The following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member;

(b) A homestead, household goods, and personal property including jewelry, clothing, and other items of a personal nature shall be excluded from consideration;

(c) Equity of \$6,000 in income producing nonhomestead real property, business or nonbusiness, essential for self-support shall be excluded from consideration;

(d) Equity of \$4,500 in automobiles shall be excluded from consideration;

(e) Burial reserves of up to \$1,500 per individual, burial spaces including the plot, casket, vault, and items of a similar nature, and irrevocable prepaid burial plans, contracts and burial trusts shall be excluded from consideration;

(f) The value of excludable assets in excess of excluded amounts shall be added to liquid assets for comparison against the liquid asset upper limits; and

(g) Other assets not excluded or within the upper limits shall be added to liquid assets for comparison against the liquid asset upper limits.

(2) [(4)] Resources above the allowable amounts shall result in ineligibility for benefits under KHCP, but only to the extent that liquid resources exceed the allowable upper limits; this means that liquid resources can be reduced by incurred medical expenses [spent down] to establish eligibility. For example, if an otherwise eligible individual with \$2,300 in liquid assets is hospitalized, he shall [would] become eligible for KHCP coverage after receiving \$300 in billable services.

Section 8. Verification Requirements. Except as specified in Section 2 [3] of this administrative regulation, the cabinet shall require verification in accordance with the following in eligibility determinations (although verification of residency may be requested [should be accomplished] in questionable situations):

(1) Income verification for all family unit members shall be required for inpatient hospital admissions and major outpatient procedures or services;

(2) Verification shall be required every six (6) months, or more frequently at the option of the hospital, unless the family unit's income has increased;

(3) If the family unit's income has increased, the hospital [shall not be required but] may require verification of income if the newly reported income exceeds the KHCP income limits;

(4) If the family unit alleges zero income, verification may be [obtained or at the option of the hospital] waived;

(5) Income and resource verification may be waived at the option of the hospital for minor outpatient procedures or services;

(6) Self-support verification for children under age twenty-one (21) not living with parents and who attend college or a similar type of higher education facility shall be required; and

(7) Applicants for KHCP benefits must provide requested information within ten (10) days unless this requirement is waived by the hospital.

Section 9. Medicaid Covered Services. (1) [Dual Eligibility. The individual or family unit may be referred to apply for Medicaid benefits. The following provisions shall be applicable for dual eligibility:

(1) An individual may be KHCP eligible and simultaneously determined Medicaid eligible. An individual may apply for ongoing Medicaid and KHCP eligibility concurrently.

(2) An individual may apply for both KHCP and Medicaid spenddown eligibility.

(3) For Medicaid spenddown eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spenddown eligibility.

(4) Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for KHCP eligibility.

(5) An individual may apply for both KHCP and SSI/Medicaid benefits.

(6) If an individual or family unit is subsequently approved for Medicaid [or QMB] benefits during a period of KHCP eligibility, the hospital may bill the Medicaid Program in accordance with Medicaid policy established [shown] in 907 KAR 1:013 and 907 KAR 1:015 provided the hospital reports the KHCP adjustment prior to billing the Medicaid Program.

(2) For Medicaid spenddown eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spenddown eligibility.

Section 10. Fair Hearing. (1) An applicant may request a fair hearing on his KHCP eligibility determination within thirty (30) days of the denial or approval date.

(2) Each hospital shall be responsible for conducting hearings to determine if KHCP eligibility was determined correctly and for correcting any errors in KHCP eligibility which have been made.

(3) The hearings shall be conducted by impartial hospital staff not involved in the KHCP eligibility determination.

(a) Hearings shall be conducted within thirty (30) days of the date of the hearing request.

(b) During the hearing:

1. The appellant shall be provided an opportunity to review evidence against him;

2. To cross-examine witnesses against him;

3. To present evidence in his behalf; and

4. To be represented by counsel.

(c) Hospital decisions regarding the hearing shall be rendered within fourteen (14) days of the hearing and a copy of the decision provided to the KHCP applicant and the Department for Medicaid Services.

(d) The hearing process may be terminated at any time a corrected decision of KHCP eligibility is made in favor of the potential KHCP recipient with appropriate notice of KHCP eligibility and termination of the hearing process required.

(e) Further appeal may be to the local court having [competent] jurisdiction.

(2)(a) If a hospital contests medical necessity [(whether] before or after the fact[]) for a KHCP eligible person or for a Medicaid recipient with regard to additional days of inpatient coverage, the Medicaid PRO [Peer Review Organization (PRO)] shall be contacted by the hospital for a determination of the appropriateness of the service using Medicaid standards of medical necessity.

(b) The decision of the PRO shall be binding upon the hospital for KHCP purposes.

(c) It shall be the PRO's responsibility to advise the hospital, the KHCP or Medicaid recipient, and the recipient's physician, in writing, of the PRO's decision.

(d) If the KHCP or Medicaid recipient is dissatisfied with the decision of the PRO, he may appeal the decision in accordance with 907 KAR 1:563 [904-KAR-2:055].

Section 11. Benefits. Benefits under KHCP shall be as follows:

(1) Medicaid recipients shall receive any necessary days of coverage for hospital stay as specified in KRS 205.640;

(2) [Except for nonemergency care rendered in the emergency room,] KHCP recipients, including individuals with a pending KHCP application, shall not be billed for hospital services provided by Medicaid participating hospitals in accordance with KRS 205.640.

Section 12. Incorporation by Reference. (1) The Kentucky Hospital Care Program (KHCP) Manual, August 15, 1998 edition is incorporated by reference.

(2) This material 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. [Except as otherwise specified, the provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after April 16, 1993 except that the Medicaid Program shall also recognize and accept determinations of eligibility made under the previous program guidelines for the period of July 1, 1993 through April 15, 1994.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 27, 1998

FILED WITH LRC: September 1, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 115 hospitals and the indigent citizens they serve.

(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 ex-

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tent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: Expenditures for this program are limited at the federal and state levels. These limits are likely to be met during FY 1999; therefore, expenditures should not increase due to this amendment.

(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: Expenditures for this change have been examined and they are budget neutral.

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

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

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

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment should provide hospital services to an increased number of indigent Kentuckians.

(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 Kentucky's indigent population by not providing access to hospital services.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY 907 KAR 1:755E

This emergency administrative regulation is being promulgated to comply with 42 USC 1396r(b) and recent Health Care Financing Administration (HCFA) directives concerning the annual resident review process and to clarify policy with regard to the need for nursing facility services and specialized services for mental retardation. An ordinary administrative regulation is not sufficient for the following reasons: Failure to clarify policy may result in hearing decisions which are inconsistent with federal policy. Failure to revise the annual review to optional status could result in the denial of Medicaid payments to nursing facilities for failure to comply with the mandatory requirement. Denial of Medicaid payment could result in an individual losing a bed in a nursing facility. As a result, the loss of payments for medical care could place the health and welfare of an individual in jeopardy. This emergency administrative regulation clarifies that failure to perform an annual review is no longer, in and of itself, grounds to deny Medicaid payment. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on February 18, 1998 as follows: Since the promulgation of the previous emergency administrative regulation, comments received at the Notice of Intent public hearing indicated that failure to clarify policy regarding the need for nursing facility services and specialized services for mental retardation could result in incorrect hearing decisions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis

907 KAR 1:755E. Preadmission Screening and Resident Review Program.

RELATES TO: 42 CFR 483.100-483.138, 42 USC 1396r
STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 GA HB 132

EFFECTIVE: September 1, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. House Bill 132 of the 1998 General Assembly, reorganized the Cabinet for Human Resources (CHR) and placed the Department for Medicaid Services (DMS) and the Medicaid Program under the Cabinet for Health Services (CHS). 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. KRS 194.050 authorizes the secretary of the cabinet to administer and enforce all applicable state laws and all rules and regulations necessary to protect, develop and maintain the health, welfare, personal dignity, integrity and sufficiency of the individual citizens of the Commonwealth and necessary to operate programs and fulfill responsibilities vested in the cabinet. This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

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Section 1. Definitions. The following definitions shall be applicable:

(1) "Appropriate placement" means the admission to a nursing facility of an individual with mental illness, mental retardation, or a related condition only when:

(a) The individual's needs are such that he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022; and

(b) The individual's needs for treatment:

1. Do not exceed the level of services delivered in the nursing facility alone; or

2. When necessary, through nursing facility services supplemented by specialized services provided by or arranged for through the Department for Mental Health and Mental Retardation Services as established in Section 5 of this administrative regulation.

(2) "Department for Mental Health and Mental Retardation Services" (DMHMRS) means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, mental retardation, or a related condition as defined in 42 CFR 483.106(d) and (e).

(3) "Exempted hospital discharge" is defined in 42 CFR 483.106 as an individual:

(a) Who is admitted to any nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which he received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(4) "Interfacility transfer" means an individual who is transferred from one (1) nursing facility to another nursing facility, with or without an intervening hospital stay.

(5) "Level of care of nursing facility services" means those standards as defined in 907 KAR 1:022, Section 4, and in 907 KAR 1:025.

(6) "Mental retardation" means an individual's condition which has been determined to have a level of retardation (mild, moderate, severe or profound) as defined in 42 CFR 483.102.

(7) "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(8) "Nursing facility" (NF) means a facility as defined in 907 KAR 1:022.

(9) "Preadmission screening and resident review" (PASRR) means the process which:

(a) Screens and identifies an individual with a serious mental illness, mental retardation, or a related condition prior to admission to a NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with mental illness, mental retardation, or a related condition of whether the individual requires the level of services provided by a NF; and

(c) If the individual is determined to require a NF level of care, whether the individual requires specialized services for the mental illness or mental retardation as defined in 42 CFR 483.120.

(10) "PRO" means a peer review organization which is under contract with the department.

(11) "Provisional admission" means an individual is admitted to a NF for fourteen (14) days or less before a PASRR Level II is required; and

(a) Meets the NF's level of care as established in 907 KAR 1:022; and

(b) Who has been diagnosed with delirium, as defined in 42 CFR 483.130, which precludes an accurate diagnosis and assessment until the delirium clears; or

(c) Who is in need of respite for in-home caregivers and to whom the individual with serious mental illness, mental retardation, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to a NF from a hospital to which he was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" is defined in 42 CFR 435.1009 as a severe, chronic disability that shall meet all of the following condi-

tions and be attributable to:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons; and

(c) Is manifested before the person reaches age twenty-two (22);

(d) Is likely to continue indefinitely; and

(e) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living.

(14) "Serious mental illness" means an individual's condition which meets the definition in 42 CFR 483.102.

(15) "Significant change" means that the individual's condition has immediate treatment needs requiring a comprehensive reassessment and material change in plan of care established by the Long Term Care Resident Assessment Instrument User's Manual incorporated by reference.

(16) "Specialized services for mental illness" is defined in 42 CFR 483.120 as the implementation of an individualized plan of care:

(a) Developed and supervised by a physician;

(b) Provided by an interdisciplinary team of qualified mental health professionals;

(c) That prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) That requires the level of intensity provided in a psychiatric inpatient hospital.

(17) "Specialized services for mental retardation or a related condition" is defined in 42 CFR 483.120 and 483.440(a)(1) as the continuous, aggressive and consistent implementation of a program of specialized and generic training, treatment, health and related services, which are comparable to services an individual receives in an intermediate care facility for the mentally retarded-developmentally disabled (ICF-MR/DD), or in a community based waiver program which provides services to persons with the mental retardation or a related condition in which twenty-four (24) hour supervision is available that is directed toward:

(a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;

(b) The prevention or deceleration of regression or loss of current optimal functional status; and

(c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified Individual Program Plan (IPP) objectives for the individual.

Section 2. General Applicability. (1) The provisions of this administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a NF participating in the Kentucky Medicaid Program.

(2) Pursuant to 42 CFR 483.106(d) and (e), DMHMRS shall be responsible for PASRR determination and evaluation functions.

(a) The Division of Mental Retardation of DMHMRS shall be responsible for determining and evaluating whether an individual applying for admission to a NF needs NF services and, if so, whether he needs specialized services for mental retardation.

(b) The Division of Mental Health of DMHMRS shall be responsible for determining whether an individual applying for admission to a NF needs NF services and, if so, whether he needs specialized services for mental illness.

(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to a NF needs NF services and, if so, whether he needs specialized services for

mental illness to the Division of Mental Health.

(d) The Division of Mental Health may delegate the evaluation and determination functions for which they are responsible, except that the designee shall not be a NF or an entity that has a direct relationship or indirect affiliation or relationship with a NF.

(3) For NF reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the NF level of care criteria specified in 907 KAR 1:022 and 907 KAR 1:025.

Section 3. Deemed Consent for PASRR. An individual applying for admission to, or requesting a continued stay in a NF participating in Medicaid, shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified 42 USC 1396r.

Section 4. Responsibility for Performing the Level I PASRR. (1) A NF, prior to admitting an individual, except a readmission or an interfacility transfer, shall conduct a Level I PASRR. The Level I PASRR is an identification function. The Level I PASRR process shall comply with the requirements of 42 CFR 483.128.

(2) If a positive response is noted in the Level I PASRR, a Level II PASRR shall be performed prior to the individual's admission to a NF unless he is a provisional admission, readmission, interfacility transfer or exempted hospital discharge.

(a) The Level II PASRR is the evaluation and determination of whether an individual needs NF services and, if so, whether he needs specialized services.

(b) The individual or legal guardian of an individual who is identified in the Level I PASRR as suspected of having a mental illness, mental retardation, or a related condition shall be notified by the NF of a referral to DMHMRS for a Level II PASRR.

(3) If a Level II PASRR is required, it shall be the responsibility of the NF to contact DMHMRS to perform the Level II PASRR as follows:

(a) For a new admission, a NF shall:

1. First conduct a Level I PASRR prior to admission; and
2. Notify DMHMRS if a Level II PASRR is required;

(b) The DMHMRS shall complete the Level II PASRR evaluation and determination prior to the admission.

(c) For an exempted hospital discharge, a NF shall first conduct a Level I PASRR prior to admission and shall notify DMHMRS prior to the end of the exempt thirty (30) days, if the individual is found to require more than thirty (30) days of NF care. DMHMRS shall conduct a Level II PASRR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(d) For a provisional admission pending clearing of delirium or for respite, if the individual is found to require more than fourteen (14) days of NF care, DMHMRS shall conduct a Level II PASRR and make an evaluation and determination of the need for specialized services within the fourteen (14) day provisional admission.

(e) If a significant change in the individual's condition occurs, the NF shall notify DMHMRS within twenty-one (21) days and DMHMRS shall complete the Level II PASRR within nine (9) working days.

(f) The Level II PASRR process shall comply with the requirements of 42 CFR 483.128 through 483.136.

(4) A NF shall transmit to the PRO a completed copy of an individual's PASRR prior to or simultaneously with a request for certification of level of care for an individual's admission to a NF.

Section 5. Responsibility for Performing the Level II PASRR. For each applicant seeking admission to a NF and each nursing facility resident who has a mental illness, mental retardation or related condition DMHMRS shall be responsible for:

(1) Determining whether the individual requires the level of services provided by a NF in accordance with 42 CFR 483.132;

(2) If the NF level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, mental retardation, or a related condition in accordance with 42 CFR 483.134 and 483.136;

(3) Contracting with mental health-mental retardation centers for the evaluations and determinations of whether the individual who is mentally ill, mentally retarded, or has a related condition requires NF

services and, if so, whether he requires specialized services;

(4) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASRR function so long as it retains ultimate control and responsibility for the performance of its obligations under 42 CFR 483.100-483.138 and this administrative regulation; and

(5) Notifying the individual or his legal guardian of the written findings of the Level II report and explaining the meaning of the report.

Section 6. Payments for PASRR Evaluations and Determinations. (1) The department shall reimburse DMHMRS for the cost of providing PASRR services under this administrative regulation.

(2) The department's reimbursement to DMHMRS for this purpose shall not exceed the actual cost to DMHMRS, including contract costs, of implementing and operating the PASRR program.

(3) The department shall reimburse a NF only if:

(a) The Level I and, if required, Level II PASRR are completed in a timely fashion as established in Sections 4 and 5 of this administrative regulation:

1. Prior to a new admission;
2. For an exempted hospital;
3. For a provisional admission; or
4. Because of a significant change in the individual's condition.

(b) When a Level I and, if required, a Level II PASRR is not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Sections 4, 5 and 8 of this administrative regulation, but the required PASRR is performed at a later date, reimbursement shall be made for NF services provided after the PASRR is completed if the individual is determined to need NF level of care.

(4) The department shall not reimburse a NF for specialized services provided to an individual who is mentally ill, mentally retarded, or has a related condition and is in a NF. However, services of a lesser intensity than specialized services shall be provided by a NF to an individual so identified in a Level II PASRR.

Section 7. Admissions Criteria Under PASRR. (1) An admission to a Medicaid participating NF shall be in accordance with 42 USC 1396r.

(2) An individual who is mentally ill, mentally retarded, or has a related condition may be admitted to a NF when:

(a) The PASRR determines that he requires NF level of care; and

(b) A determination of the need for specialized services for mental illness, mental retardation, or a related condition is made.

(3) An individual who is mentally ill, mentally retarded, or has a related condition and who does not require NF level of care shall not be admitted to a NF regardless of whether he requires specialized services for mental illness, mental retardation or a related condition.

Section 8. Criteria for Subsequent Reviews. (1) An individual in a Medicaid participating NF shall not be subject to a mandatory annual resident review in accordance with 42 USC 1396r. However, if an individual experiences a significant change in condition, a PASRR is required as established in Sections 4 and 5 of this administrative regulation.

(2) An individual who is determined not to be mentally ill, mentally retarded, or have a related condition shall not be subject to further PASRR activity.

(3) An individual who is determined to be mentally ill, mentally retarded, or has a related condition but who requires the level of care provided by a NF may remain in the facility. A determination as specified in Section 5 of this administrative regulation, shall be made as to whether specialized services for mental illness, mental retardation, or a related condition are required.

(4) An individual who is mentally ill, mentally retarded, or has a related condition but who is determined not to require the level of care provided by a NF but does require specialized services may choose to remain in the NF if he has continuously resided in a NF for thirty (30) months or more before the date of the determination in accordance with 42 CFR 483.118(c) and 483.130(4). If he requires specialized services for mental illness, mental retardation, or a re-

lated condition, DMHMRS shall be responsible for the cost of such services.

(5) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by a NF but does require specialized services and who has resided in a NF for less than thirty (30) consecutive months before the date of the determination shall be discharged from the NF to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 483.12.

(6) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by a NF and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 42 CFR 483.12.

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASRR process to be inappropriately placed.

(2) DMHMRS shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom such a need has been determined.

Section 10. Appeals. In accordance with 907 KAR 1:563 an individual may appeal a PASRR determination that he:

- (1) Does not require the level of services provided by a NF; or
- (2) Does or does not require specialized services.

Section 11. Incorporation by Reference. (1) The manual, Long Term Care Resident Assessment Instrument User's Manual Version 2.0, October 1995, for use with version 2.0 of the Health Care Financing Administration's Minimum Data Set, Resident Assessment Protocols and Utilization Guidelines is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, 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 25, 1998

FILED WITH LRC: September 1, 1998 at 4 p.m.

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: Any savings obtained from removal of annual reviews are expected to be utilized in the other required reviews:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local reve-

nues: 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: The implementation of this administrative regulation should improve availability and access to medical services for medically needy Medicaid recipients.

(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 clarify policy may result in hearing decisions which are inconsistent with federal policy. Failure to revise the annual review to optional status could result in the denial of Medicaid payments to nursing facilities for failure to comply with the mandatory requirement. Denial of Medicaid payment could result in an individual losing a bed in a nursing facility. As a result, the loss of payments for medical care could place the health and welfare of an individual in jeopardy.

(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 sets minimum or uniform standards in accordance with federal requirements.

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

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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: None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), [(15);] (19)
164.753(2), 34 CFR 682.410(b)(10), 20 USC 1095a

STATUTORY AUTHORITY: KRS 164.748(4), [(15);] 164.753(2),
20 USC 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 USC 1071 through 1087-2 [Title IV, Part B of the federal act]. 20 USC 1095a [KRS 164.748(10) empowers the authority to collect from borrowers loans on which the authority has met its guarantee obligation. Section 605 of PL 102-164 (20 USC 1095-1)] permits a student loan guarantee agency to garnish the disposable pay [wages] of a borrower to recover [on] a loan guaranteed pursuant to 20 USC 1071 through 1087-2 [Title IV, Part B of the federal act], notwithstanding a [any] provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(19) [(10)] authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(10) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes [is necessary to establish] the procedures for implementing [such] wage garnishment in accordance with requirements of the federal act. [This amendment is necessary to simplify and clarify aspects of the delivery of notices and the hearing procedure.]

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform [conforms] to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) [(2)] An [Ne] order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority[; a written notice]. The notice shall include at least the following information:

- (a) The name and address of the debtor;
- (b) The amount of the debt determined by the authority to be due;
- (c) Information sufficient to identify the basis for the debt;
- (d) A statement of the intention of the authority to issue an [and] order for withholding of disposable pay [and that the debtor's earnings and property are subject to both administrative and judicial enforcement];
- (e) A statement of the right to dispute the existence or amount of the debt or the terms of a [any] proposed [prior] repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);
- (f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;
- (g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;
- (h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall [will] be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) [(3)] An amount shall not [Notwithstanding subsection (1) of this section, no amount shall] be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) [(4)] Establishment of a written repayment schedule in accordance with subsection (3) [(2)](g) of this section shall be deemed, for purposes of subsection (3) [(2)](e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) [(5)] Service of the notice required by [described in] subsection (3) [(2)] of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall [may] otherwise be evidenced by affidavit of a person [an individual] executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by [described in] Section 1(3) of this administrative regulation, files with the authority a written request for a [such] hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than [head of the authority]), except that nothing contained in this sentence shall preclude the appointment of an administrative law judge, shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a [any] case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall [A party may] request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include; but shall not be limited to; the following:

a. [1:] Participating in an ex parte communication which would prejudice the proceedings;

b. [2:] Having a pecuniary interest in the outcome of the proceeding; or

c. [3:] Having a personal bias toward a [any] party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing [Dispute hearings] shall be conducted in Franklin County or another [any other] location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter [matters] specifically authorized by this administrative regulation, a

hearing officer shall not communicate off the record with a [any] party to the hearing concerning a [any] substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A [Any] person, upon request, shall [may] receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the [authority] board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing

officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

2.a. [shall] Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. [Otherwise, the board may] Reject or modify, in whole or in part, the hearing officer's decision; or

c. [it may] Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

- (i) [1:] In violation of constitutional or statutory provisions;
- (ii) [2:] In excess of the statutory authority of the agency;
- (iii) [3:] Without support of substantial evidence on the whole record;

(iv) [4:] Arbitrary, capricious, or characterized by abuse of discretion; or

(v) [5:] Based on an ex parte communication which substantially prejudiced the rights of a [any] party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law. [in accordance with 11 KAR 4:030, which shall decide the dispute upon the hearing record. Where the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay may be issued forthwith by the authority, which shall, if the debtor's appeal is successful, return to the debtor any money received pursuant to the withholding order.]

(4) The remedies provided in this section shall not:

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) [the laws of the Commonwealth or federal laws and nothing contained in this section shall] Be construed to stay the use of another remedy. [other remedies:]

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) [Not less than ten (10) days prior to the scheduled in-person or telephonic hearing, the parties shall exchange and submit to the hearing officer a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness expected to be introduced into evidence.] Upon request of a [either] party [at any time], the hearing officer may issue subpoena for the production of a document [documents] or attendance of a witness [witnesses].

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority [and the hearing officer:] a written statement specifically stating the basis of dispute [and a legible copy of any documentation that the debtor intends to offer as evidence].

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of each witness [any witnesses] expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall [may] serve upon the debtor proposed

stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue ~~[any additional issues]~~ not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph ~~[this requirement]~~ may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in subsection (2) of this section.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 [4] of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) [2(3)] [(2)] of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose ~~[any]~~ new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) 1. Either party, without leave of the hearing officer, may depose a witness ~~[witnesses]~~, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories ~~or~~ ~~[and]~~ request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a ~~[such]~~ shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Noncompliance with the requirements of this subsection, including failure of the authority to timely appoint a hearing officer or respond to a request for inspection of records ~~or failure of the debtor to submit information in accordance with paragraph (b) of this subsection~~ in a timely manner sufficient to permit the debtor, the authority, or the hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including ~~[, but not limited to,]~~ postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice ~~required by~~ ~~[described in]~~ Section 1(3) [(2)] of this administrative regulation and the debtor's statement and the stipulations ~~[response]~~ ~~required by~~ ~~[described in]~~ subsection (2)(b) 1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable

as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.

2. ~~[However,]~~ Statutes or judicial rules ~~[otherwise]~~ pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. ~~[, and]~~ The hearing officer may receive ~~[any]~~ evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy ~~[Copies]~~ of a document ~~[documents]~~ shall be admissible if:

(a) There is ~~[, and shall require only the]~~ minimal authentication ~~[necessary]~~ to establish a reasonable presumption of ~~its~~ ~~[their]~~ genuineness and accuracy; or

(b) It is ~~[may be]~~ admitted without objection.

5. The hearing officer may exclude ~~[any]~~ evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection ~~[Objections]~~ to an evidentiary offer ~~[offers]~~ may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:

a. Statutes and administrative regulations;

b. Facts which are not in dispute; and

c. ~~[of]~~ Generally-recognized technical or scientific facts;

2. ~~[The hearing officer]~~ Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party ~~[, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given]~~ an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an ~~[any]~~ issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a ~~[any]~~ defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a ~~[any]~~ proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a ~~[any]~~ question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. ~~[may]~~ Consider the matter; and

2. ~~[, but shall]~~ Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) ~~[The hearing officer]~~ May reverse the prior decision ~~[only]~~ if the debtor presents evidence that:

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1. [(a)] Circumstances have changed or new information is available; or

2. [(b)] The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 CFR 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 20 USC 523(a)(8)(B), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an [any] amount of disposable pay shall con-

stitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or [and] Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$8,050
2	10,850
3	13,650
4	16,450
5	19,250
6	22,050
7	24,850
8	27,650
Each additional person	add \$2,800

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$10,070
2	13,570
3	17,070
4	20,570
5	24,070
6	27,570
7	31,070
8	34,570
Each additional person	add \$3,500

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$9,260
2	12,480
3	15,700
4	18,920
5	22,140
6	25,360
7	28,580
8	31,800
Each additional person	add \$3,220

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area [areas] listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,250	1,155	1,665	1,832	2,519	3,641	4,321	6,767	10,568
Rented dwelling	2,352	2,408	2,694	2,441	2,569	2,463	2,225	1,407	1,335
Other lodging	209	105	218	244	311	333	400	569	1,779
Utilities, fuels, and public services	1,290	1,377	1,821	2,011	2,153	2,421	2,550	2,768	3,444
Household services	145	143	233	177	372	382	397	579	1,448
Housekeeping and miscella-	232	184	268	339	413	448	594	664	914

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neous supplies									
Household furnishing and equipment	603	344	564	613	957	1,029	1,792	2,372	3,090
Vehicle purchases (net outlay)	853	370	713	665	1,704	2,517	3,853	3,161	4,103
Gasoline and motor oil	364	248	450	608	782	957	1,040	1,343	1,451
Vehicle maintenance and repairs	286	159	318	432	509	649	714	1,041	1,220
Vehicle insurance	274	200	440	536	621	778	935	1,112	1,364
Vehicle lease, license, and other charges	95	61	93	233	264	259	311	683	1,145
Public transportation	227	183	350	382	325	508	456	651	1,378

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that **exceed [exceeds]** the applicable amount for a category shall be presumed unnecessary:

	New York	Philadel- phia	Boston	Pittsburgh	Buffalo
Annual Expenditures					
Owned dwellings	5,027	3,952	4,838	3,063	3,386
Rented dwellings	3,311	1,855	2,367	1,099	1,323
Other lodging	608	415	639	308	276
Utilities, fuels, and public services	2,585	2,196	2,401	2,300	2,153
Household services	625	394	710	436	221
Housekeeping and miscellaneous supplies	437	443	518	416	329
Household furnishings and equipment	1,429	1,023	1,329	1,195	1,465
Vehicle purchases (net outlay)	1,253	2,154	2,278	2,093	1,225
Gasoline and motor oil	764	793	863	765	785
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,083	2,082	1,977	1,550	1,430
Public transportation	895	389	637	382	195

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area [areas] listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,029	669	1,327	1,846	2,288	3,075	3,887	5,737	8,770
Rented dwelling	1,192	1,559	1,553	1,466	1,572	1,592	1,303	871	578
Other lodging	187	137	148	281	250	265	434	511	1,146
Utilities, fuels, and public services	1,244	1,385	1,752	2,005	2,026	2,173	2,430	2,583	3,097
Household operations services	493	189	195	266	337	393	449	567	985
Housekeeping and miscellaneous supplies	284	197	257	281	415	422	554	593	809
Household furnishings and equip- ment	711	918	652	692	1,202	1,535	1,825	2,138	3,321
Vehicle purchases (net outlay)	705	580	1,449	2,230	2,464	2,912	3,833	5,200	6,462
Gasoline and motor oil	454	467	621	719	915	1,129	1,324	1,480	1,714
Vehicle maintenance and repairs	267	244	369	448	540	690	884	980	1,168
Vehicle insurance	228	243	379	528	587	694	870	1,063	1,191
Vehicle lease, license, and other charges	98	111	129	214	292	392	387	645	1,127
Public transportation	129	122	165	251	197	298	374	435	892

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that **exceed [exceeds]** the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Milwaukee	Minneapolis- St. Paul	Cleveland	Cincin- nati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	5,297	4,394	4,764	5,308	3,033	3,695	3,111	3,518
Rented dwelling	2,143	1,467	1,600	1,443	1,800	1,605	1,274	1,481
Other lodging	543	556	510	544	343	515	408	291
Utilities, fuels, and public services	2,295	2,464	1,956	2,019	2,304	2,292	2,416	2,288
Household services	450	432	348	693	328	467	756	548
Housekeeping and miscella-	433	411	393	502	328	402	379	377

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neous supplies								
Household furnishings and equipment	1,903	1,299	1,625	1,778	1,338	1,488	1,090	1,510
Vehicle purchases (net outlay)	3,238	3,200	3,840	2,579	2,076	3,172	3,670	2,839
Gasoline and motor oil	992	1,072	1,055	1,185	853	1,087	987	1,079
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,104	2,869	1,949	2,602	1,978	2,109	1,877	2,219
Public transportation	561	372	476	513	284	386	413	432

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area [areas] listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,274	810	1,310	1,587	1,943	3,033	3,872	4,981	8,671
Rented dwelling	1,512	1,463	1,559	1,692	1,921	1,998	1,606	1,238	702
Other lodging	181	45	104	139	208	244	360	487	1,032
Utilities, fuels, and public services	1,588	1,597	1,882	2,035	2,121	2,338	2,459	2,821	3,485
Household services	172	137	311	348	337	634	578	759	1,611
Housekeeping and miscellaneous supplies	155	234	314	320	351	469	442	523	755
Household furnishings and equipment	406	461	651	770	994	1,396	1,636	1,887	3,202
Vehicle purchases (net outlay)	954	834	1,264	2,034	3,227	2,809	3,795	4,719	5,937
Gasoline and motor oil	573	539	692	828	1,000	1,220	1,272	1,483	1,667
Vehicle maintenance and repairs	256	287	416	477	685	721	742	1,125	1,080
Vehicle insurance	292	252	427	575	699	802	889	1,076	1,237
Vehicle lease, license, and other charges	133	92	95	160	195	245	340	484	966
Public transportation	129	87	141	183	203	234	283	499	869

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed [exceeds] the applicable amount for a category shall be presumed unnecessary:

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas-Fort Worth	Houston
Annual Expenditures						
Owned dwelling	6,000	5,447	4,600	3,630	3,058	3,013
Rented dwelling	2,580	1,744	2,097	2,411	2,874	2,152
Other lodging	680	520	481	206	317	424
Utilities, fuels, and public services	2,379	2,262	2,611	2,260	2,579	2,588
Household services	746	652	611	629	696	749
Housekeeping and miscellaneous supplies	424	360	383	316	414	437
Household furnishings and equipment	1,634	1,280	1,526	1,410	1,631	1,307
Vehicle purchases (net outlay)	2,799	2,392	4,235	2,438	3,508	4,151
Gasoline and motor oil	1,005	916	990	962	1,270	1,165
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,304	2,013	2,676	2,202	2,661	2,438
Public transportation	664	332	433	535	404	415

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area [areas] listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwellings	1,430	1,057	1,604	2,014	2,478	3,895	5,000	6,749	11,12
Rented dwellings	2,887	2,376	2,649	3,054	2,803	2,686	2,341	1,875	1,701
Other lodging	203	91	227	314	244	320	443	505	1,158

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Utilities, fuels, and public services	1,304	1,226	1,503	1,489	1,837	2,027	2,204	2,536	2,913
Household services	260	204	256	301	371	390	671	767	1,550
Housekeeping and miscellaneous supplies	255	215	301	294	414	467	557	662	863
Household furnishings and equipment	423	296	864	813	916	1,294	1,453	3,524	4,258
Vehicle purchases (net outlay)	557	954	1,194	1,939	2,394	2,634	4,922	3,074	3,808
Gasoline and motor oil	522	489	649	764	962	1,174	1,307	1,432	1,613
Maintenance and repairs	647	294	511	581	633	686	1,151	1,235	1,398
Vehicle insurance	389	228	439	513	575	776	932	1,094	1,326
Vehicle lease, license, and other charges	205	135	195	197	271	369	448	690	1,158
Public transportation	373	208	164	257	288	328	363	545	1,223

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed [exceeds] the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage
Annual Expenditures							
Owned dwellings	4,907	6,172	4,458	4,779	5,115	5,244	4,690
Rented dwellings	3,583	3,155	3,610	2,069	2,051	3,734	3,373
Other lodging	484	577	289	465	518	742	466
Utilities, fuels, and public services	2,075	2,023	1,833	1,893	1,852	1,837	2,308
Household services	710	695	526	617	575	653	531
Housekeeping and miscellaneous supplies	449	390	438	427	529	446	333
Household furnishings and equipment	1,453	2,976	1,066	1,450	1,291	1,511	1,756
Vehicle purchases (net outlay)	2,270	2,121	2,305	2,738	2,851	2,231	2,260
Gasoline and motor oil	1,078	1,081	1,116	971	997	911	1,054
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,353	2,692	2,511	1,908	2,232	2,329	2,393
Public transportation	413	564	463	474	698	879	1,010

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	1,676	1,900	2,216	2,404	2,884	3,021	3,653	4,804	5,115
Apparel	403	482	582	844	1,347	1,494	1,440	1,872	3,755
Health insurance	327	621	743	602	456	410	566	609	647
Medical services	233	241	326	360	327	431	426	499	978
Prescription drugs	128	281	273	206	165	193	205	174	169
Medical supplies	27	42	46	41	63	70	65	55	79
Personal care products and services	137	163	243	199	265	336	407	467	651
Education	693	281	267	215	183	145	199	302	689
Life and other personal insurance	76	103	119	97	174	222	207	262	619

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	2,666	2,553	3,113	3,918	4,090	4,756	4,903	5,788	7,110
Apparel	1,024	797	601	1,090	1,353	1,429	1,865	2,269	3,369
Health insurance	495	857	1,232	1,316	1,267	1,029	1,127	948	1,181
Medical services	493	314	356	470	552	524	570	820	794
Prescription drugs	179	375	459	534	525	367	319	360	341
Medical supplies	63	44	99	93	89	89	127	118	147
Personal care products and services	186	200	264	313	377	517	553	652	745
Education	80	229	203	186	160	370	531	410	1,112

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Life and other personal insurance	166	146	266	302	355	369	529	618	1,163
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8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,806	3,041	3,669	4,364	4,561	4,984	5,455	6,108	8,255
Apparel	974	1,241	1,263	1,502	1,617	1,960	2,287	2,266	4,134
Health insurance	444	287	505	783	772	844	879	950	1,076
Medical services	185	243	293	333	431	577	624	759	1,071
Prescription drugs	223	206	224	218	253	258	319	334	351
Medical supplies	40	30	53	81	86	71	119	159	174
Personal care products and services	279	257	312	374	458	502	488	651	737
Education	228	95	217	331	338	364	457	749	1,625
Life and other personal insurance	138	84	225	327	287	375	497	627	915

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,529	4,209	5,377	4,650	5,299	6,428	7,046	8,723	
Apparel	1,272	1,739	1,643	1,656	2,003	2,218	2,739	3,952	
Health insurance	413	392	565	671	1,026	1,064	1,002	1,113	
Medical services	452	169	305	471	586	743	819	1,127	
Prescription drugs	160	155	151	209	179	307	289	382	
Medical supplies	27	47	86	69	87	102	119	194	
Personal care products and services	294	285	379	380	443	520	610	829	
Education	446	134	222	239	373	545	772	1,870	
Life and other personal insurance	178	220	228	287	417	490	719	1,103	

10. If the debtor's household consists of five (5) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures								
Food	4,901	4,796	4,930	5,692	6,457	7,026	7,742	9,565
Apparel	1,654	1,521	1,192	1,779	1,769	2,217	3,114	4,383
Health insurance	376	290	381	643	823	974	1,164	1,220
Medical services	402	355	387	473	616	802	918	1,06
Prescription drugs	183	131	183	195	218	275	265	359
Medical supplies	35	46	40	62	93	92	115	212
Personal care products and services	392	297	340	391	433	574	706	716
Education	657	184	276	383	479	417	932	1,331
Life and other personal insurance	206	132	276	309	408	555	674	1,125

Section 5, [4:] (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor[s] by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially or-

dered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a [any] lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A [No] withholding under this section shall **not** be grounds for discharge from employment, refusal to employ or disciplinary action against an [any] employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this

section.

Section 6. [5:] (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall [said service may] be made by:

(a) An [any] officer authorized under KRS 454.140 to serve process; or

(b) A [by any] person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another [any other] adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) [if] His employee or agent with apparent authority signs or refuses to sign a receipt.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 44.030, 131.565, 164.748(10), (14), (19) [~~164.740 to 164.785, 31 CFR 30.33, 31 USC 3718, 3720A~~]

STATUTORY AUTHORITY: KRS 13B.170 [~~13A-100~~], 164.748(4), (9), (10), (14); 34 CFR 30.33, 31 USC 3718, 3720A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(10) and (14) authorize the authority to collect student loans from individual borrowers and to perform acts that are necessary or appropriate to carry out the purposes of the authority. [In accordance with] KRS 131.565 and 31 USC 3720A [Section 2653 of the Federal Deficit Reduction Act of 1984, as amended by the Cash Management Improvement Act Amendments of 1992 (PL 102-589);] provide that the authority may enter agreements with the Kentucky Revenue Cabinet and with the federal government to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. In accordance with KRS 44.030, the authority may submit a claim to the State Treasurer to withhold an [any] amount due to an individual from the treasury against a claim of the authority. This administrative regulation establishes [sets forth] the process for notification and appeal afforded to an individual [individuals] in implementing a set off of an authority claim [claims] through the Kentucky Revenue Cabinet, the State Treasurer, or the federal government [Internal Revenue Service].

Section 1. [Notification. The authority shall send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which set off is sought pursuant to KRS 131.560; 44.030, or 31 USC 3718. Said notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain such additional information as the authority may prescribe. Notification shall be sent not less than thirty (30) days prior to submitting the claim to the Kentucky Revenue Cabinet or to the State Treasurer or sixty-five (65) days prior to submitting the claim to the federal government for set off, and shall be deemed effective when placed with the Postal Service for delivery.

Section 2. Disputed Claims. (1) Any person notified pursuant to the Section 1 of this administrative regulation may petition the authority in writing to dispute the claim of the authority. This written statement of appeal shall specify the basis on which the authority's claim is disputed, including any legal or equitable defense the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit such additional documentation as the authority may require.

(2) Time period for disputing the authority's claim. The petitioner shall submit the written statement of appeal within:

(a) Thirty (30) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to KRS 131.560 or set off of any amount due from the State Treasurer pursuant to KRS 44.030; or

(b) Sixty-five (65) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to 31 USC 3718, except that the statement of appeal may be submitted after the 65th day, but not later than fifteen (15) days after the date the authority mails copies of documents to the petitioner, if the petitioner requests to inspect records in advance with 34 CFR 30.33(c)(1).

Section 3. Federal Payment [Income Tax] Setoff. (1) Notification.

(a) The authority shall, not less than sixty-five (65) days prior to submitting the claim to the federal government for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of [any] indebtedness to the authority for a sum certain for which setoff is sought pursuant to 31 USC 3718.

(b) The notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(2) Objection.

(a) A [Any] person notified pursuant to subsection (1) of this section may submit to the authority a written objection to the setoff of federal payments to repay the claim of the authority. This written objection shall specify the basis on which the authority's claim is disputed, including all legal and equitable defenses the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal [at any time] prior to a final determination with [any] additional documentation. The petitioner shall submit additional documentation as the authority may require based upon the particular facts alleged in the petitioner's statement of appeal.

(b) The authority, or its designated representative, shall make a final written determination of the validity of the claim and refrain from submitting the claim to the federal government pending the final determination if:

1. The person objects to the setoff of federal payments to repay the claim of the authority within sixty-five (65) calendar days of the date the notification required by subsection (1) of this section is sent; or

2. The person submits a written request to inspect records to the authority within twenty (20) days of the date of the notification described in subsection (1) of this section and subsequently submits a written objection to the authority not later than fifteen (15) days after the date the authority mails copies of the requested documents to the petitioner. [If a person objects to setoff of federal payments to repay the claim of the authority within sixty-five (65) calendar days of the date the notification described in subsection (1) of this section is sent, [Upon receipt of a written statement of appeal on a timely basis,] the authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, and] shall make a final written determination of the validity of the claim and shall refrain from referring the authority's claim to the federal government pending the final determination. If within twenty (20) days of the date of the notification described in subsection (1) of this section the petitioner submits a request to inspect records, the written objection may be submitted after the 65th day but not later than fifteen (15) days after the date

the authority mails copies of documents to the petitioner.}]

(c) The authority, or its designated representative, shall not consider as a defense a [any] question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available;
or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(d)1. [(2)] The final determination of the authority shall be based on [any] documentation submitted by the petitioner, [any] other records relevant to the loan obligation received from another [from any other] source, and relevant records of the authority, which shall be made available to the petitioner upon request, except that the petitioner may appear in person or by telephone to present additional facts upon request by the petitioner and explanation of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence.

2. The petitioner's request to appear in person or by telephone shall include identification of all persons [the individuals] that the petitioner wishes to have testify, identification of the specific issues regarding which each person is [the individuals are] prepared to testify, and an explanation of the reasons why each person's [individual's] testimony is necessary to resolve the issues.

3. The authority shall grant the petitioner's request to appear in person or by telephone if the authority determines, in its discretion, that the issues to be resolved require a determination of credibility or veracity.

4. [Such] Documentation considered by the authority and the record of an [any] in-person or telephonic testimony shall constitute the record of the appeal.

5. The authority's decision shall be written and sent to the petitioner at his last known address. If the decision is adverse to the petitioner, the decision shall state the facts on which the decision is based, any applicable statutes or administrative regulations, the conclusion underlying the decision, and the amount of the authority's claim to be set off against federal payments owed to the petitioner.

(e) Review of final determination of the authority.

1. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education.

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if the request for review by the Secretary of the U.S. Department of Education is submitted to the authority and received by the authority within thirty (30) calendar days after the date the authority's final written determination is rendered and mailed to the petitioner.

(3) If a person notified pursuant to subsection (1) of this section does not submit an objection within the time specified in subsection (2)(b) of this section or, upon a final determination upholding, in part or in whole, the claim of the authority, the petitioner does not submit a request for review of the authority's final determination within the time specified in subsection (2)(e) of this section, the claim shall [may] be referred by the authority to the federal government in accordance with 31 USC 3718 and 34 CFR 30.33(a). [If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education in accordance with 34 CFR 30.33(d)(3).]

(4) Voluntary repayment. A person notified pursuant to subsection (1) of this section may agree to repay the debt to the authority on terms satisfactory to the authority.

(a) The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if:

1. The person owing the debt:

a. Agrees to make monthly payments; and

b. Submits the first payment to the authority; and

2. The payment is received by the authority not later than:

a. [1.] The 65th calendar day following the date the notification required by [described in] subsection (1) of this section is sent; [or]

b. [2.] The seventh calendar day after the date the authority's final written determination is rendered and mailed to the petitioner; or

c. [3.] The 15th calendar day after documents are mailed to the person owing the debt by the authority if the person requests to inspect documents within twenty (20) calendar days following the date the notification required by [described in] subsection (1) of this section is sent.

(b) For purposes of paragraph (a) of this subsection, the authority shall require that payments be received monthly on a timely basis and a downpayment of the lesser of the outstanding balance of the debt or \$250. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including [but not limited to] housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.

(c)1. After the authority has referred a claim to the federal government for setoff against a [any] federal payment owed to the person owing the debt, an [no] amount previously set off shall not be refunded.

2. The authority's claim for setoff shall be withdrawn if the person owing the debt or another person on behalf of the debtor agrees to make monthly payments acceptable to the authority, submits six (6) consecutive, timely payments as agreed, and requests the authority to withdraw the claim for setoff.

3. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including [but not limited to] housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.

(d) In support of a monthly payment amount less than the monthly accrual of interest, the petitioner shall submit to the authority:

1. Evidence of current income;

2. Evidence of current expenses; and

3. A statement of the unpaid balance on all other student loan debt.

(e) If a person establishes a repayment schedule in accordance with this subsection and subsequently fails to submit consecutive, timely payments, a [any] subsequent repayment schedule established for the purpose of paragraphs (a) or (c) of this subsection shall require an initial payment of the lesser of the outstanding balance of the debt or \$500 plus ten (10) percent of the outstanding balance that exceeds \$1,000.

Section 2. [4.] (1) State income tax refund setoff.

(a) Notification.

1. The authority shall, not less than thirty (30) days prior to submitting the claim to the Kentucky Revenue Cabinet for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of [any] indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 131.560.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 131.560, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. A [Any] person notified by the authority pursuant to paragraph (a) of this subsection or notified by the Kentucky Revenue Cabinet

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(As Amended at ARRS, September 8, 1998)

pursuant to KRS 131.570(1) [that an income tax refund may be withheld pursuant to KRS 131.560 because of a claim of the authority,] may petition the authority [within the time period specified in Section 2(2)(a) of this administrative regulation] for an administrative review and a hearing in accordance with 11 KAR 4:030, Sections 4 and 5, [subsection (3) of this section.]

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky Revenue Cabinet, if the request for administrative review is submitted to the authority and received by the authority within thirty (30) calendar days after the date the notice required by [described in] paragraph (a) of this subsection is sent.

(2) Setoff of amounts due from the State Treasurer pursuant to KRS 44.030.

(a) Notification.

1. The authority shall, not less than fifteen (15) calendar days prior to submitting the claim to the Kentucky State Treasurer for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of [any] indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 44.030.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 44.030, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. A [Any] person notified by the authority that an amount due from the State Treasurer may be withheld pursuant to KRS 44.030 may, [within the time period specified in Section 2(2)(a) of this administrative regulation,] petition the authority for a hearing in accordance with 11 KAR 4:030, Section 5, [subsection (3) of this section.]

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky State Treasurer, if the request for administrative review is submitted to the authority and received by the authority within fifteen (15) calendar days after the date the notice required by [described in] paragraph (a) of this subsection is sent.

(3) Defenses.

(a) Except as provided in paragraph (b) of this subsection, a debtor may assert a [any] legal or equitable defense to a claim by the authority for setoff pursuant to subsections (1) and (2) of this section pertaining to the existence, amount or the person's liability on the particular debt in question or the terms of a prior repayment schedule.

(b) The designated authority representative conducting an administrative review in accordance with 11 KAR 4:030, Section 4, or the hearing officer conducting a hearing pursuant to 11 KAR 4:030, Section 5, shall not consider as a defense a [any] question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available;
or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud.

[(3) A hearing requested pursuant to this section shall be arranged and conducted in accordance with 11 KAR 4:030, Section 3(2) through (8), and if the petitioner disagrees in part or in whole with the final, written determination of the hearing officer, the petitioner may appeal the hearing officer's decision to the authority board in accordance with 11 KAR 4:030, Section 4.]

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

11 KAR 4:070. Reports by postsecondary institutions.

RELATES TO: 1998 Ky. Acts ch. 256, sec. 2(2), ch. 575, sec. 2(15)(b)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9), ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 256, sec. 1(9) requires the authority to establish by administrative regulation procedures for the administration of the Osteopathic Medicine Scholarship Program. 1998 Ky. Acts ch. 575, sec. 6(7) requires the authority to promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation prescribes a deadline by which postsecondary institutions shall certify compliance with 1998 Ky. Acts ch. 256, sec. 2(2) and ch. 575, sec. 2(15)(b) or submit to the authority the report specified in 1998 Ky. Acts ch. 256, sec. 2(2).

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1) and 1998 Ky. Acts ch. 575, sec. 2(4).

(2) "Business school" is defined in KRS 164.740(3).

(3) "College" is defined in KRS 164.740(4).

(4) "Participating institution" is defined in 1998 Ky. Acts ch. 575, sec. 2(15)

(5) "School of nursing" is defined in KRS 164.740(20).

(6) "School of osteopathic medicine" means a postsecondary institution that offers a program accredited in accordance with 1998 Ky. Acts ch. 256, sec. 1(3)(b).

(7) "Vocational school" is defined in KRS 164.740(22).

Section 2. Certification of Compliance. (1) A school of osteopathic medicine or a college, business school, school of nursing, or vocational school shall submit to the authority by August 1 of each year a certification of compliance, signed by the president or chief executive officer of the institution, if it awards student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2).

(2) A participating institution shall submit to the authority by August 1 of each year a certification of compliance, signed by the president or chief executive officer of the institution, if it commits financial resources to student financial assistance in compliance with 1998 Ky. Acts ch. 575, sec. 2(15)(b).

Section 3. Report If a school of osteopathic medicine or a college, business school, school of nursing, or vocational school does not award student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2), the institution shall submit to the authority by August 1 of each year a report specified in 1998 Ky. Acts ch. 256, sec. 2(2), signed by the president or chief executive officer of the institution.

Section 4. Coordination with Other Agencies. (1) An organization or agency [Organizations and agencies] responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance may confirm with the authority after August 1 each year whether a school of osteopathic medicine or a college, business school, school of nursing, or vocational school has submitted to the authority either a certification of compliance or a report specified in 1998 Ky. Acts ch. 256, sec. 2(2).

(2) If a school of osteopathic medicine or a college, business school, school of nursing, or vocational school is subsequently found to have submitted to the authority a false or erroneous certification of compliance or report, the authority shall not be held liable by an [any] individual, organization, or agency for disbursement of funds, appropriated by the General Assembly for the purposes of student financial assistance, to a student [students] attending that institution

in reliance on that certification or report.

GARY ABNEY, Chairman
 RICHARD F. CASEY, General Counsel
 APPROVED BY ACTION: June 26, 1998
 FILED WITH LRC: July 14, 1998 at 2 p.m.

**KENTUCKY HIGHER EDUCATION
 ASSISTANCE AUTHORITY
 Division of Student Services
 (As Amended at ARRS, September 8, 1998)**

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

RELATES TO: KRS 164.740 to 164.785 [1994 Ky. Acts ch. 36]
 STATUTORY AUTHORITY: KRS [19A-100:] 164.748(4),
 164.753(4) [1994 Ky. Acts ch. 36]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 264.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires [2] authorizes the authority to promulgate administrative regulations pertaining to grants. The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This administrative regulation sets forth definitions of terms common to multiple administrative regulations in this chapter. [This amendment is necessary to reflect a change in the CAP Grant Program made by recent legislation.]

Section 1. Definitions. [For purposes of Chapter 5 of Title 11 of the Kentucky Administrative Regulations, the terms listed below shall have the following meanings:] (1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) "Authority" is defined [The definition of "authority" is governed] by KRS 164.740(1).

(3) "Business school" is defined [The definition of "business school" is governed] by KRS 164.740(3).

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 [1994 Ky. Acts ch. 36] to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "College" is defined [The definition of "college" is governed] by KRS 164.740(4).

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2.a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution; and [Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution; and]

(c) 1. For purposes of the college access program, a business school, college, school of nursing or vocational school, and meets the requirements of 20 USC 1070 to 1070c-4 and 1088 to 1099 [the federal act]; or

2. [(d)] For purposes of the Kentucky tuition grant program, is a private, nonprofit college whose institutional programs are not comprised solely of sectarian instruction.

(8) [The term] "Eligible noncitizen" means an individual who is:

(a) Either:

1. [(a)] A U.S. national;

2. [(b)] A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or

3. [(c)] A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. [(1)] "Refugee";

b. [(2)] "Asylum granted";

c. [(3)] "Indefinite parole" [and] or "humanitarian parole"; or

d. [(4)] "Cuban-Haitian entrant"; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa.

[Students who are in the U.S. on an F1 or F2 student visa only or a J1 or J2 exchange visitor visa only or a G series visa only are not eligible for KHEAA grant assistance.]

(9) "Eligible program of study" means an undergraduate program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; [and]

(b) For purposes of the Kentucky Tuition Grant Program, leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled; and

(c) For purposes of the CAP Grant Program, leads to a certificate, diploma, or degree in a field other than theology, divinity or religious education.

(10) [The term] "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 USC 1087kk through 1087vv [set forth in Title IV, Part F of the federal act] to the information that the student and his family provided on the application.

(11) [The definition of] "Federal act" is defined [governed] by KRS 164.740(9) and means 20 USC 1001 through 1146a.

(12) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including a [any] combination of courses, work experience, research or special studies which:

1. The institution requires of the student to consider him as being engaged in full-time study; and

2.a. [which] Amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for an institution [institutions] utilizing a trimester, semester [trimesters, semesters], or quarter hour system; or

b. [Which] Consists of a program requiring the minimum of twenty-five (25) clock hours per week for an institution that does [those institutions that do] not utilize a trimester, semester, or quarter-hour system [such systems]; and

(b) The tuition and fees customary for full-time study at that institution.

(13) [The definition of] "Grant" is defined [governed] by KRS 164.740(10).

(14) "Kentucky tuition grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(15) "KHEAA grant" means an award [awards] of a student financial assistance grant [grants] under the college access program or the Kentucky tuition grant program or a combination of the two (2).

(16) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual which is:

(a) Measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded; and

(b) [The limit is] Depleted by one (1) semester:

1. For a [(a)] For any KHEAA grant disbursed to a full-time stu-

dent in a semester; or

2. [(b)] By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(17) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(18) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(19) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with the criteria established in 13 KAR 2:045. [criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040.]

(20) "Total cost of education" [for an academic year] means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
Kentucky Educational Savings Plan Trust
(As Amended at ARRS, September 8, 1998)**

11 KAR 12:010. Definitions for 11 KAR Chapter 12. [Kentucky Educational Savings Plan Trust definitions.]

RELATES TO: KRS 164A.300 to 164A.380

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12. [KRS 164A.325(9) provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust [(KRS Chapter 164A). KRS 164A.305 defines certain terms and words, but does not define other terms and words which are necessary to carry out and accomplish the purposes, objectives and provisions of KRS 164A.300 through 164A.380]. This administrative regulation defines additional terms and words which shall be interpreted and applied in a uniform manner when used in the participation agreement, forms, notices and other instruments related to the administration of the trust. [This amendment is necessary to add defined terms previously separately defined in multiple administrative regulations in 11 KAR Chapter 12.]]

Section 1. Definitions. [The language used in the administration of the trust contains some legal and technical terms as well as everyday terms which, of necessity, have specialized meaning. The following definitions shall be controlling in the interpretation and application of these words and phrases, except where the context clearly requires another interpretation:] (1) [The term] "Academic period" means [shall mean] one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.

(2) [The word] "Account" means [shall denote] the account in the program fund established and maintained under the trust for a beneficiary.

(3) [The term] "Account balance" means [shall mean] the fair market value of an account as of the accounting date.

(4) [The term] "Accounting date" means [shall mean] the date, not later than the last business day of each quarter as determined by the

program administrator.

(5) [The term "administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.

(6) [The definition of] "Beneficiary" is defined in [governed by] KRS 164A.305(3).

(6) [(7) The definition of] "Benefits" is defined in [governed by] KRS 164A.305(4).

(7) [(8) The definition of] "Board" is defined by [governed by] KRS 164A.305(5).

(8) "Dependent person" means a person who is unable to meet the criteria for an independent person as defined [all of the criteria listed] in subsection (12) of this section.

(9) [The term] "Designated date" means [shall mean] the date on which each beneficiary is eligible to be designated in a participation agreement.

(10) "Domicile" or "legal residence" means a person's true, fixed, and permanent home and [–it] is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere. ["Legal residence" and domicile convey the same notion of permanence and are used interchangeably.]

(11) "Effective date" means [shall mean] the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989.

[(11) The words "hardship" or "emergency" shall denote those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.]

(12) "Independent" means a person [who meets all of the following criteria. An independent person is one (1):]

(a) Who has not been claimed by his parent [Whose parent has not claimed such person] as a dependent on a federal or state income tax return [returns] for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon a parent [parent(s)]; and

(c) Whose parent's income is not taken into account by a [any] private or governmental agency furnishing educational financial assistance to the person, including a scholarship, loan, or [scholarships, loans, and] other assistance.

(13) [The definition of] "Institution of higher education" is defined in [governed by] KRS 164A.305(8).

(14) [(13) The term] "Kentucky ties" means a participant or beneficiary who has [shall mean participants or beneficiaries who have] contact or ties with the Commonwealth, including [such as] current or former residence or employment in the Commonwealth, or a family member [family members] with current or former residence in the Commonwealth.

(15) [(14) The term] "minimum rate of return" means [shall mean] the minimum earnings of four (4) percent guaranteed by the trust on a payment [payments] made by the participant.

(16) [(15)] "Notice to delay benefits under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to delay benefits under a participation agreement, after the beneficiary has attained the age of eighteen (18).

(17) [(16)] "Notice to extend payments under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).

(18) [(17)] "Notice to increase or decrease payments under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to increase or decrease payments under a participation agreement.

(19) [(18)] "Notice to preauthorize debit" means [shall mean] the form which a participant completes to notify the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.

(20) [(19)] "Notice to substitute beneficiary" means [shall mean] the form which a participant submits to the program administrator of the trust to substitute a beneficiary.

(21) [(20)] "Notice to terminate the participation agreement"

means [shall mean] the form which a participant submits to the program administrator of the trust to terminate a participation agreement under the trust.

(22) [(21)] "Notice to use trust benefits" means [shall mean] the form which a participant submits to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.

(23) [(22)] "Notice to authorize payroll deduction" means [shall mean] the form which a participant submits to the program administrator of the trust to direct the participant's employer to deduct payments from the participant's payroll deduction check and forward that amount to the trust.

(24) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if the guardianship was not established primarily to confer Kentucky residency on the person. [The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.]

(25) [(23)] The term "Participant" is defined in KRS 164A.305(10).

(26) [(24)] The term "Participation agreement" is defined in KRS 164.305(11).

(27) [(25)] The word "Payments" means [shall denote] the money paid by the participant to the trust under the participation agreement.

(28) [(26)] The term "Payment book" means [shall mean] the book which contains individual coupons, designating the amount and due date of each payment.

(29) [(27)] The term "Program administrator" is defined in KRS 164A.305(12).

(30) [(28)] The term "Program fund" is defined in KRS 164A.305(13).

(31) [(29)] The terms "Property settlement agreement" or "decree of dissolution by the court" means [shall mean] the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.

(32) [(30)] The term "Trust year" means [shall mean] the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

(33) [(31)] The term "Vested participation agreement" is defined in KRS 164A.305(15).

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
Kentucky Educational Savings Plan Trust
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: KRS 164A.305(15), 164A.330(9)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. [provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust. KRS 164A.305(15) provides that "vested participation agreement" and] [means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the trust.] KRS 164A.330(9) requires that each participation agreement [shall] provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky

prior to enrollment in another [any other] educational institution. This administrative regulation establishes [is necessary [not only] to clarify, interpret, and establish] the standards for proof of residency of a beneficiary for a vested participation agreement [tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residency of a beneficiary. This amendment is necessary to eliminate definitions common to multiple administrative regulations, which definitions are being added to a separate administrative regulation.]

Section 1. [Definitions. (1) The term "dependent person" means a person who is unable to meet all of the criteria listed in subsection (4) of this section:

(2) The term "domicile" means a person's true, fixed, and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere. "Legal residence" and domicile convey the same notion of permanence and are used interchangeably.

(3) The term "independent" means a person who meets all of the following criteria. An independent person is one:

(a) Whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon parent(s); and

(c) Whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

(4) The term "parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

Section 2. Residency Requirement. (1) A person [An individual who has [at any time] been a resident of the Commonwealth of Kentucky for at least eight (8) continuous years and was designated as a beneficiary under a participation agreement that is in full force and effect for that entire eight (8) year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

(2) For purposes of subsection (1) of this section, a participation agreement shall be deemed to be in full force and effect if, at the end of the eight (8) year period, the total contributions of principal to the account that remain in the account balance equals \$2400 and the participation agreement has not been cancelled at the time that the beneficiary first enrolls in an institution of higher education.

Section 2. [3.] Proof of Residency. (1) [At any time] Following the expiration of the period of eight (8) years of continuous residency by the beneficiary, either the participant or the beneficiary shall [may] submit to the program administrator evidence of the residency to establish a vested participation agreement. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. An individual who enrolls [Individuals who enroll] in college immediately following graduation from high school and remains enrolled shall:

(a) Be [are] treated as a dependent person [persons] unless the contrary is evident from the information submitted; and

(b) Have his domicile [-In such cases, domicile shall be] inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under subsection [Section 1](4) of this section [administrative regulation] and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. A [No] single fact shall not be [is] paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have proba-

tive value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;

(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;

(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(d) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at an institution of higher education following and [only] incidental to the [such] change in domicile;

(e) Payment of occupational taxes in Kentucky;

(f) Payment of real property taxes in Kentucky;

(g) Payment of intangible personal property taxes in Kentucky;

(h) Ownership of real property in Kentucky, if the property was used as a residence during the claimed period of residency status;

(i) Long-term lease of housing during the claimed period of residency status;

(j) Kentucky automobile registration during the claimed period of residency;

(k) Kentucky driver's license during the claimed period of residency status;

(l) Registration as a Kentucky voter during the claimed period of residency; or

(m) Corroborating affidavit of a nonrelative.

(5) The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and shall formulate a decision that considers all relevant facts.

Section 3. [4:] Nontransferability of Vested Participation Agreement. Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer residency [such] status on a substituted beneficiary, nor shall the residency of one (1) beneficiary be taken into account in the establishment of a vestment period of substituted beneficiary.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
Kentucky Educational Savings Plan Trust
(As Amended at ARRS, September 8, 1998)**

11 KAR 12:060. Cancellation and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.350 [164A.345]

STATUTORY AUTHORITY: KRS 164A.325(5), (9), 164A.350(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. [provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust.] KRS 164A.350(2) [164A.345(+)] provides that a [-in pertinent part, that any] participant may cancel a participation agreement [at will and specifies the amount of refund the participant is entitled to at various stages] and requires [-That statute authorizes] a penalty [an administrative fee] to be charged by the trust. This administrative regulation establishes [is necessary to establish] the procedures for cancellation of the participation agreement and refund of the account balance and specifies [to specify] the penalty. [administrative fee. This amendment is necessary to conform the language to the definition in 11 KAR 12:010, Section 1(5):]

Section 1. Cancellation. (1) To cancel a participation agreement

pursuant to KRS 164A.350(2), a participant shall submit to the program administrator a notice to terminate the participation agreement. [A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator a notice to terminate the participation agreement:]

(2) ~~Except as provided in KRS 164A.350(7), a penalty [164A.345(2) or subsection (3) of this section, an administrative fee] shall be deducted from the amount refunded to the participant. The penalty shall be ten (10) percent of the investment earnings accrued to the account. The amount to be refunded pursuant to KRS 164A.350 [164A.345], less the penalty [administrative fee], shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement.]~~

(3) ~~Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the program administrator shall immediately refund money from the account in accordance with KRS 164A.345(1), without deduction of an administrative refund fee. The participant shall submit verifiable evidence of the hardship to the program administrator simultaneous with submission of the notice to terminate the participation agreement.]~~

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
Kentucky Educational Savings Plan Trust
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335, 26 USC 529, PL 105-34 (+)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 164A.300 through 164A.380 establish the Kentucky Educational Savings Plan Trust and prescribe the operation of the trust. 1998 Ky. Acts ch. 132 amended certain of the above statutes to conform operation of the trust to 26 USC 529 and to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program," under the Taxpayer Relief Act of 1997 (PL 105-34).]~~ KRS 164A.310(8), 164A.330 [335](5) and 164A.335[+] establish the statutory framework for payment of benefits [to an institution] from the program fund. This administrative regulation establishes [is necessary to establish] the maximum benefits payable in an [any] academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. [This amendment is necessary to clarify aspects of the disbursement process.]

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant shall [may] elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in an [any] academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) ~~If [in the event]~~ a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwith-

standing KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

~~[(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.]~~

Section 2. Beneficiary Residing Off Campus. If a beneficiary resides off campus, ~~[then,]~~ upon written request of the participant, the program administrator ~~shall~~ may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board for an academic period as established by the institution for an on-campus student ~~[students]~~. ~~[However,]~~ The amounts paid to the institution and the beneficiary shall not exceed the amount payable in an ~~[any]~~ academic period from the program fund or exceed the higher education costs for that institution.

Section 3. Nonenrollment. (1) If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits by the first academic period of the academic year, beginning July 1 and ending June 30 of the following year, that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, ~~[then]~~ the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350.

(2) A participant ~~shall not~~ may delay distribution of benefits ~~[no]~~ more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods:

(a) Distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first; or

(b) The balance shall be refunded to the participant pursuant to KRS 164A.350.

Section 4. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for an ~~[any]~~ academic period, ~~[then]~~ that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in an ~~[any]~~ academic period not exceeding the higher education costs may be paid ~~[to the institution]~~ for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, ~~[then]~~ the program administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant pursuant to KRS 164A.350. ~~[The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation.]~~ The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 256 sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256 sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256, sec. 1(9) ~~[establishes the Osteopathic Medicine Scholarship Program and]~~ requires the authority to ~~[administer the program and to]~~ promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes ~~[provides procedures for]~~ the application process for the Osteopathic Medicine Scholarship Program.

Section 1. **Definition.** ~~[Definitions:]~~ "Authority" is defined in KRS 164.740(1).

Section 2. (1) The school of osteopathic medicine shall send notification to the authority by July 1 of each year of those students eligible to receive the scholarship.

(2) The list submitted by the school of osteopathic medicine shall contain the eligible student's name, address, Social Security number, and academic year for which the promissory note is applicable.

Section 3. Promissory Notes. (1) Following receipt of the list of eligible students required by ~~[described in]~~ Section 2 ~~[1]~~ of this administrative regulation, the authority shall deliver to the school of osteopathic medicine a promissory note for signature by each ~~[the]~~ student eligible to receive an osteopathic medicine scholarship.

(2)(a) The promissory note shall be signed by the student in the presence of an official of the school of osteopathic medicine.

(b) The student shall present to the school official adequate identification, including a driver's license, a school identification, or other item of identification satisfactory to the school official to ensure that the person signing the promissory note is the student named on the promissory note.

(c) After the student has signed the promissory note, a copy shall be retained by the student for his records and the original shall be returned by the school to KHEAA.

(3) The school of osteopathic medicine shall deliver to the authority with the original signed promissory note for a student eligible to receive the scholarship a data sheet containing the following information necessary to process the promissory note ~~[notes]~~ for the scholarship:

- (a) Student's complete name;
- (b) Student's Social Security number;
- (c) Student's current home address including county;
- (d) Student's current home telephone number;
- (e) Student's anticipated graduation date;
- (f) Student's date of birth;
- (g) Student's gender;
- (h) Student's academic classification; and
- (i) Name, permanent address, and telephone number of at least two ~~(2)~~ contact persons (one (1) of whom shall be a relative of the student) expected to know the student's whereabouts after the student ceases enrollment.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 ~~[establishes the Osteopathic Medicine Scholarship Program and]~~ requires the authority to ~~[administer the program and]~~ promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation

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establishes [provides] procedures for the priority of awarding scholarships if funds are insufficient to honor all requests.

Section 1. Insufficient Funds. If funds are insufficient to award full scholarships to all applicants, a ranking system shall be used in awarding the scholarships. The full scholarship shall be awarded first to those students closest to completing the Osteopathic Medicine Scholarship Program.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 [~~establishes the Osteopathic Medicine Scholarship Program and~~] requires the authority to [~~administer the program and~~] promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes [provides] procedures for disbursement of the monies awarded under the Osteopathic Medicine Scholarship Program.

Section 1. Definition. [~~Definitions:~~] "Authority" is defined in KRS 164.740(1).

Section 2. Disbursement of Funds. (1)(~~a~~) Within thirty (30) days following receipt by the authority of the original signed promissory notes for all students eligible to receive the osteopathic medicine scholarship, the monies awarded under the Osteopathic Medicine Scholarship Program shall be transmitted directly to the school of osteopathic medicine in the form of a single check made payable to the school of osteopathic medicine on behalf of all students eligible to receive the osteopathic medicine scholarship or by electronic funds transfer.

(~~b~~) The authority shall [~~also~~] send to the school a check register containing each recipient's name and social security number.

(~~c~~) The recipient shall sign the check register in the presence of an official of the school to acknowledge disbursement of the osteopathic medicine scholarship.

(~~d~~) The school shall retain a copy of the check register for its records and forward the original register and any undisbursed osteopathic medicine scholarship funds to the authority not later than thirty (30) days following receipt of the check register and the funds.

(2) The student shall present to the school official adequate identification, including a driver's license, a school identification, or other item of identification satisfactory to the school official to ensure that the person signing the check register is the student named on the promissory note.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 256

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 [~~establishes the Osteopathic Medicine Scholarship Program and~~] requires the authority to [~~administer the program and~~] promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes [provides] procedures for refund to the authority [KHEAA] of monies paid under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Federal act" is defined in KRS 164.740(9) and means 20 USC 1001 through 1146a.

Section 2. General. If an osteopathic medicine scholarship recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program, the authority shall be due a refund of monies paid to the school on behalf of that student.

Section 3. Failure to Enroll or Official Withdrawal Before Classes Begin. If an osteopathic medicine scholarship recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program prior to the first day of classes, the scholarship award shall [~~will~~] be deemed an overaward and a full refund of the monies to the authority shall be required, notwithstanding a [~~any~~] policy of the school to the contrary.

Section 4. Withdrawal after Classes Begin. (1) If an osteopathic medicine scholarship recipient officially withdraws from the osteopathic medicine program after the beginning of classes, the amount of refund shall be determined in accordance with the school's refund and repayment policy relative to financial aid funds.

(2) The refund and repayment [~~This~~] policy shall be published and consistently administered. The policy shall be filed with the authority. The authority shall be notified in writing of a [~~a~~] [~~any~~] change in the policy. Allocation of refund among the Osteopathic Medicine Scholarship Program and other student financial assistance programs shall be consistent with allocation of refund and repayment among federal student financial assistance programs administered under the federal act.

Section 5. Unofficial Withdrawal. If an osteopathic medicine scholarship recipient unofficially withdraws from an accredited osteopathic medicine program [~~at any time~~], the authority shall not seek from the school a refund of the monies paid under the scholarship. The osteopathic medicine scholarship recipient shall be responsible for immediate repayment of the entire amount of monies paid under the scholarship as well as the applicable interest [~~any interest that may be applicable~~].

Section 6. Refund of an amount due by the school shall be transmitted to the authority and shall be accompanied by the student's name and Social Security number, the reason for the refund, date of enrollment status change, the semester and year, and the calculation used for determining the refund.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)

**11 KAR 14:050. Osteopathic Medicine Scholarship Program
recordkeeping requirements [records and administrative regu-
lations].**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch.
256, sec. 1(9)
NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts
ch. 256, sec. 1(9) [~~establishes the Osteopathic Medicine Scholar-
ship Program and~~] requires the authority to [administer the program
and to] promulgate administrative regulations for administration of
the Osteopathic Medicine Scholarship Program. This administra-
tive regulation establishes requirements [provides guidelines] for
maintaining records under the Osteopathic Medicine Scholarship
Program.

Section 1. The school of osteopathic medicine shall maintain
complete and accurate records pertaining to the eligibility, enroll-
ment, and progress of students receiving aid under this program and
the disbursement of funds and institutional charges as may be nec-
essary to audit the disposition of these funds. The school's records
shall be maintained for at least three (3) years after the student
ceases to be enrolled at the school of osteopathic medicine.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
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KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)

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

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch.
256, sec. 1(9)
NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts
ch. 256, sec. 1(9) [~~establishes the Osteopathic Medicine Scholarship
Program and~~] requires the authority to [administer the program and
to] promulgate administrative regulations for administration of the
Osteopathic Medicine Scholarship Program. This administrative
regulation establishes [provides] procedures for the application of
payments made under the Osteopathic Medicine Scholarship Pro-
gram.

Section 1. Definitions. (1) "Authority" is defined in KRS
164.740(1).
(2) "Disbursement" means [shall mean] the date the student
signed [signs] the check register described in 11 KAR 14:030, Sec-
tion 2 [†].
(3) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec.
1(3)(c).

Section 2. If the authority has reason to believe that the scholar-
ship recipient has ceased enrollment at the school of osteopathic
medicine prior to completion of the program of study or that the
scholarship recipient has otherwise failed to perform qualified serv-
ice after obtaining a license to practice osteopathic medicine, written
notification of demand for payment of all outstanding promissory
notes, including unpaid principal and interest accrued since the date
of disbursement, shall be sent by the authority to the scholarship
recipient's last known address and shall be effective upon mailing.

Section 3. If the scholarship recipient obligated for repayment
remits [only] a partial payment, the payment shall first be applied to

accrued interest and then to unpaid principal on the earliest unpaid
promissory note and on each unpaid promissory note in the order in
which the promissory notes were executed.

Section 4. The interest rate applicable to repayment of a prom-
issory note under this program shall be twelve (12) percent per an-
num.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: June 26, 1998
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KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)

**11 KAR 14:070. Osteopathic Medicine Scholarship Program
notifications.**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch.
256, sec. 1(9)
NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Act
ch. 256, sec. 1(9) [~~establishes the Osteopathic Medicine Scholar-
ship Program and~~] requires the authority to [administer the program
and to] promulgate administrative regulations for administration of
the Osteopathic Medicine Scholarship Program. This administra-
tive regulation establishes [sets forth] the obligation of the scholar-
ship recipient and the school of osteopathic medicine to notify the
[~~Kentucky Higher Education Assistance~~] authority of a change in
enrollment status, employment in a qualified service position, and
change of name or address.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740.
(2) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec.
1(3)(c).

Section 2. A scholarship recipient shall notify the authority in
writing within thirty (30) days of:
(1) Cessation of full-time enrollment in the osteopathic medicine
program;
(2) Completion or failure to complete a residency requirement;
(3) [and] Licensure to practice osteopathic medicine;
(4) [(3)] Employment in a qualified service position; or [and]
(5) [(4)] Change of name, permanent home address, or place of
employment.

Section 3. A school of osteopathic medicine shall notify the
authority in writing within thirty (30) days of learning that an Osteo-
pathic Medicine Scholarship recipient has ceased to be enrolled on
a full-time basis at the school of osteopathic medicine or failed to
complete a residency requirement.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
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KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)

**11 KAR 14:080. Deferment of Osteopathic Medicine Schol-
arship Program repayment.**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch.
256, sec. 1(9)
NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts
ch. 256, sec. 1(9) [~~establishes the Osteopathic Medicine Scholar-~~

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ship Program and] requires the authority to [administer the program and to] promulgate administrative regulations for administration of the **Osteopathic Medicine Scholarship** Program. This administrative regulation **establishes** [prescribes] conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Deferment" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec. 1(3)(c).

Section 2. Request for Deferment. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive [such] verification from a [any] third party of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment:

(a) ~~A~~ [-no] principal or interest **repayment** [repayments] shall **not** be required; and

(b) ~~but~~ Interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(1) of this administrative regulation.

(2) ~~The authority shall not~~ [Nothing contained in this administrative regulation shall require the authority to] grant a deferment if a [such] deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation **shall** [may] subsequently be cancelled in accordance with 1998 Ky. Acts ch. 256, sec. 1(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. ~~[The following deferments may be granted by the authority: (1)]~~ The authority may grant deferment of repayment for a period of one (1) year, not to exceed an aggregate of thirty-six (36) months, excluding residency deferment, for the following circumstances:

(1) ~~(a)~~ Disability deferment.

(a) A deferment may[-at the sole discretion of the authority:] be granted to an osteopathic medicine scholarship recipient who is:

1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or

2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.

(b) ~~(3)~~ For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, **shall be considered** [is] temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

(c) ~~(4)~~ The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the **requirements established in paragraph (b) of this subsection** [preceding terms

and conditions]. The recipient **shall be** [is] solely responsible for securing the physician's certification and ensuring that it is received by the authority.

(d) ~~(5)~~ This deferment may[-at the authority's discretion:] be granted for **a period** [periods] of less than one (1) year at a time and shall be subject to periodic review of a physician's certification. After the third year of a recipient's disability deferment, pursuant to this **paragraph** [subsection], the authority may[-in its sole discretion:] cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(2) ~~(b)~~ Hardship deferment.

(a) ~~(1)~~ If enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including[-but not limited to:] natural disaster or death in the family, after which the recipient intends to resume **the** [such] enrollment or qualified service position, the authority may determine that a hardship exists and may grant a deferment.

(b) ~~(2)~~ This deferment may[-at the authority's discretion:] be granted for **a period** [periods] of less than one (1) year but **shall not** [cannot] exceed an aggregate of twelve (12) months, and may be subject to periodic review of documentation.

(3) ~~(c)~~ Residency deferment.

(a) ~~(1)~~ An osteopathic medicine scholarship recipient may receive a deferment during enrollment in a three (3) year postgraduate residency in family practice, general internal medicine, or general pediatrics prior to beginning practice.

(b) ~~(2)~~ The recipient shall submit to the authority verification that he is enrolled in a residency program, the start date, and anticipated end date of the residency from the hospital, clinic, or other institution where the residency is being performed.

(c) ~~(3)~~ This verification shall contain the following information:

1. ~~(a)~~ The recipient's name, Social Security number, current address, and telephone number;

2. ~~(b)~~ The name and address of the hospital, clinic, or other institution where the residency is being performed;

3. ~~(c)~~ The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's residency program; and

4. ~~(d)~~ The expected date that the residency program will be completed.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student Services (As Amended at ARRS, September 8, 1998)

11 KAR 15:010. Definitions.

RELATES TO: 1998 Ky. Acts ch. 575, sec. 1 through sec. 6 and 20 USC sec. 1087II

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to ~~[administer certain aspects of the Commonwealth Merit Scholarship Program and to]~~ promulgate administrative regulations for the administration of the **Commonwealth Merit Scholarship** Program. This administrative regulation **establishes the definitions for 11 KAR Chapter 15**. ~~[defines or references certain statutory definitions of terms commonly used in the administration of the program:]~~

Section 1. Definitions. (1) "Academic term" is defined in 1998 Ky. Acts ch. 575, sec. 2(1).

(2) "Authority" is defined in 1998 Ky. Acts ch. 575, sec. 2(4).

(3) "Award period" is defined in 1998 Ky. Acts ch. 575, sec. 2(5).

(4) "Commonwealth merit scholarship" is defined in 1998 Ky. Acts ch. 575, sec. 2(6).

(5) "Commonwealth Merit Scholarship Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.785(5), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Commonwealth Merit Scholarship Program.

(6) "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that:

(a) Leads to a certificate, diploma, or associate or baccalaureate degree;

(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study; and

(c) Does not lead to a certificate, diploma, or degree in theology, divinity, or religious education. ["Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that leads to a certificate, diploma, or associate or baccalaureate degree. The term shall include study abroad or study otherwise away from the main campus, if the student pays tuition to and is given academic credit by the participating institution for that study but shall exclude a program of study leading to a certificate, diploma, or degree in theology, divinity, or religious education.]

(7) "Eligible student" is defined in 1998 Ky. Acts ch. 575, sec. 2(10).

(8) "Full-time student" is defined in 1998 Ky. Acts ch. 575, sec. 2(11).

(9) "Grade point average" is defined in 1998 Ky. Acts ch. 575, sec. 2(12).

(10) "Maximum award amount" is defined in 1998 Ky. Acts ch. 575, sec. 2(14).

(11) "Participating institution" is defined in 1998 Ky. Acts ch. 575, sec. 2(15).

(12) "Part-time student" is defined in 1998 Ky. Acts ch. 575, sec. 2(16).

(13) "Supplemental award" is defined in 1998 Ky. Acts ch. 575, sec. 2(17).

~~[(13) "Commonwealth Merit Scholarship Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Commonwealth Merit Scholarship Program.]~~

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, September 8, 1998)**

11 KAR 15:020. Student eligibility report.

RELATES TO: 1998 Ky. Acts ch. 575, sec. 6(4)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to ~~[administer certain aspects of the Commonwealth Merit Scholarship Program and to]~~ promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation establishes ~~[sets forth]~~ the procedure for a participating institution to report renewal eligibility of a student for a Commonwealth Merit Scholarship.

Section 1. Eligibility Verification. (1) The participating institution shall electronically submit to the authority a renewal eligibility file not

later than June 30 after the completion of the award period. The renewal eligibility file shall contain the name, Social Security number, and the cumulative grade point average for all eligible students.

(2) A participating institution that does not submit a renewal eligibility file by June 30 shall not receive Commonwealth Merit Scholarship funds until it has satisfied the requirement in subsection (1) of this section. ~~[Furthermore,]~~ The authority ~~[in its sole discretion,]~~ may withhold any service and funds from the participating institution and initiate action to terminate, suspend or limit participation of the institution pursuant to 11 KAR 4:020 until the file is received by the authority.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, September 8, 1998)**

11 KAR 15:030. Dual enrollment under consortium agreement.

RELATES TO: 1998 Ky. Acts ch. 575, sec. 1 to 6

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority [KHEAA] to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) authorizes ~~[allows]~~ the authority to promulgate ~~[establish by]~~ administrative regulations ~~[regulation procedures]~~ for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation establishes ~~[sets]~~ the conditions for Commonwealth Merit Scholarship eligibility for a student simultaneously enrolled in two (2) or more participating institutions.

Section 1. For purposes of the Commonwealth Merit Scholarship program, a student who is otherwise eligible pursuant to 1998 Ky. Acts ch. 575, sec. 1 to 6 and is enrolled simultaneously in two (2) or more participating institutions pursuing a program of study jointly offered by those institutions, shall be eligible under this section if:

(1) The eligible program of study is covered by a consortium agreement between the participating institutions; and

(2) ~~[if]~~ The student is carrying a combined academic workload at all participating institutions in the consortium equal to at least half-time enrollment at the primary institution.

Section 2. Consortium Agreement. Two (2) or more participating institutions in the Commonwealth Merit Scholarship Program shall ~~[may]~~, for purposes of Section 1 of this administrative regulation, execute a consortium agreement which meets at least the following terms and conditions:

(1) The agreement shall be written and signed by authorized representatives of each participating institution;

(2) The agreement shall designate which participating institution will serve as the "primary" institution; and

(3) The agreement shall specify that the primary institution shall perform the duties set forth in Section 3 of this administrative regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this administrative regulation, the primary institution designated in a consortium agreement shall assume the following duties and responsibilities:

(1) Maintain all records, including information from all participating institutions about the student's grades, institutional costs incurred, financial aid received, enrollment, and all other information

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related to the student's eligibility as is required to be maintained on any other Commonwealth Merit Scholarship recipient enrolled ~~[only]~~ in the primary institution;

(2) Disburse the Commonwealth Merit Scholarship to the eligible student;

(3) Confer academic credit to the student for all courses completed at other participating institutions under the consortium agreement as if the courses had been provided by the primary institution;

(4) Monitor the student's enrollment status at all participating institutions in the consortium and indicate the student's enrollment at the primary institution as the equivalent of the combined enrollment at all participating institutions in the consortium;

(5) Calculate any refund or repayment and make an applicable ~~[any such]~~ refund based on the primary institution's refund policy, as provided in 11 KAR 15:060 based upon a ~~[any]~~ change in enrollment at a ~~[any]~~ participating institution in the consortium, as if the student were enrolled ~~[only]~~ at the primary institution; and

(6) Provide to the authority, on behalf of all participating institutions in the consortium, all required reports and notifications ~~[required by law or administrative regulation]~~ as if the eligible student were enrolled only at the primary institution.

Section 4. The consortium agreement may contain ~~[any]~~ other terms or ~~[and]~~ conditions, not inconsistent with this administrative regulation, as may be deemed necessary or appropriate by the participating institutions.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**Kentucky Higher Education
Assistance Authority
(As Amended at ARRS, September 8, 1998)**

11 KAR 15:040. Commonwealth Merit Scholarship award determination procedure.

RELATES TO: 1998 Ky. Acts ch. 575, sec. 5(4)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, secs. 5(4)(b), 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority [KHEAA] to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) authorizes ~~[allows]~~ the authority to promulgate administrative regulations ~~[establish by administrative regulation procedures]~~ for the administration of the Commonwealth Merit Scholarship Program. 1998 Ky. Acts ch. 575, sec. 5(4)(b) requires the authority to promulgate an administrative regulation to proportionately reduce the maximum award amount for an eligible student enrolled part time. This administrative regulation establishes ~~[sets]~~ the conditions for Commonwealth merit scholarship eligibility for eligible students enrolled on a part-time basis.

Section 1. Reduction for Part-time Study. (1) If an eligible student is enrolled as a part-time student for an ~~[any]~~ academic term, the maximum award amount to which the student is entitled shall be as follows:

- (a) Fifty (50) percent if enrolled for six (6) hours;
- (b) Fifty-eight (58) percent if enrolled for seven (7) hours;
- (c) Sixty-seven (67) percent if enrolled for eight (8) credit hours;
- (d) Seventy-five (75) percent if enrolled for nine (9) hours;
- (e) Eighty-three (83) percent if enrolled for ten (10) hours;
- (f) Ninety-two (92) percent if enrolled for eleven (11) hours; and
- (g) 100 percent if enrolled for twelve (12) hours or more.

(2) The equivalent academic unit of measurement shall ~~[will]~~ be used to correspond to a credit hour, if the participating institution does not use credit hours.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

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**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, September 8, 1998)**

11 KAR 15:050. Disbursement.

RELATES TO: 1998 Ky. Acts ch. 575, secs. 6(4), (5)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to ~~[administer certain aspects of the Commonwealth Merit Scholarship Program and to]~~ promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation establishes ~~[sets forth]~~ the disbursement procedures for Commonwealth merit scholarships.

Section 1. Eligibility Verification. (1) The participating institution shall submit to the authority an eligibility verification file after the beginning of the academic term. The eligibility verification file shall contain the name, Social Security number, the student's highest ACT score attained by the date of graduation from high school, and the full-time or part-time enrollment status, measured in credit hours or credit hour equivalent, at the beginning of each academic term for all eligible students. The Commonwealth Merit Scholarship Program officer shall certify the eligibility of the eligible student and transmit the file electronically to the authority according to instructions provided by the authority.

(2) The instructions provided by the authority shall specify:

(a) Conditions under which Commonwealth Merit Scholarship funds shall be disbursed to the benefit of the eligible student;

(b) Conditions under which Commonwealth Merit Scholarship funds shall be returned to the authority.

(3) A participating institution that does not submit an eligibility verification file according to the instructions shall not receive Commonwealth Merit Scholarship funds until it has satisfied the requirements in subsection (1) of this section. ~~[Furthermore,]~~ The authority ~~[in its sole discretion,]~~ may withhold any services and funds from the participating institution until the file and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 2. Disbursement of Funds. (1) Commonwealth Merit Scholarship funds shall be disbursed by the authority to the participating institution in the form of a single check, made payable to the participating institution, or by electronic funds transfer delivered to the participating institution for subsequent delivery to the eligible student.

(2) Within thirty (30) days following receipt of the eligibility verification file, the disbursement of Commonwealth Merit Scholarship funds by the authority to the participating institution shall be made for subsequent delivery by the institution to an eligible student.

Section 3. Delivery of funds by the participating institution. (1) The participating institution shall be responsible for proper delivery of Commonwealth Merit Scholarship funds. The participating institution shall not make Commonwealth Merit Scholarship funds available to the eligible student nor apply the ~~[such]~~ funds to the recipient's account prior to the date that the eligible student has completed the registration requirements (except for the payment of tuition and fees) at the participating institution for the academic term for which the Commonwealth Merit Scholarship is disbursed.

(2) The participating institution shall be liable for delivery to the wrong person or to an ineligible student and shall make restitution to the authority of an ~~[any]~~ amount improperly delivered. Failure of the participating institution to make restitution as ~~[when]~~ required shall,

without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: June 26, 1998
FILED WITH LRC: July 14, 1998 at 2 p.m.

**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, September 8, 1998)**

**11 KAR 15:060. Commonwealth Merit Scholarship
overaward and refund and repayment procedure.**

RELATES TO: 34 CFR 668.22, 1998 Ky. Acts ch. 575, sec. 1 to 6

STATUTORY AUTHORITY: KRS 164.748(4), 34 CFR 668.22, 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) authorizes [requires] the authority to promulgate administrative regulations [establish by administrative regulation procedures] for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation establishes [sets forth] the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds.

Section 1. (1) If an eligible student fails to enroll, withdraws, or changes enrollment status, and a refund of monies paid to the institution is owed to the student by the participating institution in accordance with the participating institution's refund and repayment policy relative to financial aid funds, the amount of the refund attributable to the Commonwealth Merit Scholarship Program shall be determined in accordance with the participating institution's policy and shall be paid to the authority.

(2) The participating institution's policy shall be published and consistently administered.

(3) The policy shall be filed with the authority and the participating institution shall notify the authority in writing of a [any] change in the policy.

Section 2. Absent error by the authority or the participating institution or misrepresentation by a person that results in delivery of Commonwealth Merit Scholarship Program funds to a person who is not an eligible student at the time of the delivery of funds, a [no] repayment of Commonwealth Merit Scholarship Program funds shall not be owed to the authority by an eligible student that withdraws or changes enrollment status.

Section 3. If a refund is due from the participating institution or a repayment is due from a person who is not an eligible student at the time of delivery of funds, the participating institution shall transmit to the authority the refund and a notice of repayment due from the person that is not an eligible student, and shall report the student's name and Social Security number, the reason for the refund or repayment, date of enrollment status change, academic term and award period, and the calculation used for determining the refund or repayment.

Section 4. (1) The participating institution's refund and repayment policy relative to financial aid funds shall be adopted by the participating institution in accordance with 34 CFR 668.22.

(2) The subject matter of this administrative regulation is governed by 34 CFR 668.22, published in 53 FR 49147, December 6, 1988; 58 FR 32202, June 8, 1993; 59 FR 21866, April 26, 1994; 59 FR 22436, April 29, 1994; 59 FR 32657, June 24, 1994; 59 FR 34964, July 7, 1994; 59 FR 61180, November 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, August 15, 1995; 60 FR

61810, December 1, 1995; 61 FR 60396, November 27, 1996 and in effect July 1, 1997, adopted by the authority without change.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: June 26, 1998
FILED WITH LRC: July 14, 1998 at 2 p.m.

**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, September 8, 1998)**

11 KAR 15:070. Records and reports.

RELATES TO: 1998 Ky. Acts ch. 575, sec. 1 to 6
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) authorizes [allows] the authority to promulgate administrative regulations [establish by administrative regulation procedures] for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation establishes [sets forth] the conditions and procedures for a participating institution [institutions] to maintain records and make available to the authority records and reports necessary to the implementation of the Commonwealth Merit Scholarship Program.

Section 1. A participating institution shall establish an organized system of records pertaining to Commonwealth Merit Scholarship recipient eligibility, maintain these records for a period of not less than three (3) years after the award year in which the recipient ceased enrollment, and, upon request, make available to the authority:

(1) All records relied upon by that institution to certify that a [any] recipient of funds from the authority is an eligible student; and

(2) Information necessary to verify that the institution has complied with 11 KAR Chapter 15, and representations and requirements contained in its administrative agreement with the authority.

GARY ABNEY, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: June 26, 1998
FILED WITH LRC: July 14, 1998 at 2 p.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at ARRS, September 8, 1998)**

201 KAR 8:440. Biennial fee schedule and registration.

RELATES TO: KRS 313.080(1), (3), 313.305(1), (3), 1998 Ky. Acts ch. 556

STATUTORY AUTHORITY: KRS 313.080(1), (3), 313.305(1), (3) [1998 Ky. Acts ch. 556]

NECESSITY, CONFORMITY, AND FUNCTION: KRS 313.080(1) and (3) requires each dentist to register with the board biennially and pay a license fee. KRS 313.305(1) and (3) imposes a similar duty on dental hygienists. This administrative regulation sets the amount of the fee and prescribes the form to be used to register. [1998 Ky. Acts ch. 556 empowers the Kentucky Board of Dentistry to expend funds it deems necessary to adequately provide for operational expenses of any committee formed pursuant to this section. KRS 313.080 and 313.305 empower the Kentucky Board of Dentistry to set renewal fees for both dentists and dental hygienists in an amount as is necessary to maintain a revolving fund at approximate level of \$150,000. This administrative regulation establishes the renewal fees for dentists

and dental hygienists.]

Section 1. Fee Schedule. (1) Renewal of dental license - ninety (90) dollars for the year 1999. Beginning in 2000, \$180 for each biennial license period. [-per-year.]

(2) Renewal of dental hygiene license - seventy (70) dollars per biennial license period. [thirty-five (35) dollars per year.]

Section 2. Registration. (1) A dentist or dental hygienist shall register with the board biennially as required by KRS 313.080(1) and 313.305(1).

(2) Registration shall be made on the:

(a) Application to Renew Kentucky Dental License for 1999;
or
(b) Application to Renew Kentucky Dental Hygiene License for 1999-2000.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application to Renew Kentucky Dental License", Kentucky Board of Dentistry; and

(b) "Application to Renew Kentucky Dental Hygiene License", Kentucky Board of Dentistry.

(2) It may be inspected, copied, or obtained at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD M. SMITH, DMD, President
MARK BRENGELMAN, Assistant Attorney General
APPROVED BY AGENCY: July 13, 1998
FILED WITH LRC: July 15, 1998 at 11 a.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, September 8, 1998)**

201 KAR 26:121. Scope of practice.

RELATES TO: KRS 319.032(1)(b)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining the scope of practice within each area of specialty within the field of psychology. This administrative regulation establishes the required specialty areas and the scope of practice. [To fulfill the requirement of establishing the scope of practice of psychologists.]

Section 1. A licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, or psychological associate shall not practice or present himself outside the area of competency specified in the application and the area approved by the board based upon examination and review of qualifications, training and experience.

Section 2. (1) A completed application for a change in a licensed or certified area[(s)] of competency shall be submitted to the board as required by 201 KAR 26:155.

(2) The board shall review the applicant's credentials, qualifications and experience.

(3) Upon approval of the completed application by the board, the applicant shall take an examination in the requested area[(s)].

(4) The applicant shall submit the appropriate fee for the examination as required by 201 KAR 26:160.

Section 3. Change from Certified to Licensed Psychologist. (1) If a person has been certified and later completes, to become licensed as a psychologist, a new and complete application for licensure as a psychologist with area of competency requested shall be submitted with an approved application fee as required by 201 KAR 26:155 and 201 KAR 26:160.

(2) The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test score satisfies the licensure requirement as to criterion level.

(3) The oral portions of the examination shall be successfully completed by the applicant.

Section 4. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, or [and] a psychological associate may:

(a) Work [works] in various health care settings, including a hospital, clinic, counseling center, school, community agency, mental health center, correctional facility, the judicial system, or independent practice; and

(b) [including hospitals, clinics, counseling centers, schools, community agencies, mental health centers, correctional facilities, the judicial system, and independent practice] and Provide one (1) or more of the following direct or supportive services:

1. [(a)] Diagnosis of an emotional, mental, or nervous disorder [emotional and mental and nervous disorders], including substance abuse or an adjustment problem of an individual or group [and adjustment problems of individuals and groups] through the use of psychological testing or [and] other technique [techniques];

2. [(b)] Evaluation or assessment of the functioning of an individual, group, or organization [individuals, groups, and organizations];

3. [(c)] Treatment and amelioration of an emotional, mental, or nervous disorder [emotional and mental and nervous disorders], substance abuse, or an adjustment problem of an individual or group [and adjustment problems of individuals and groups];

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization; [(d) interventions and preventive techniques that facilitate the functioning of individuals, groups, and organizations];

5. [(e)] Consultation services;

6. [(f)] Program planning or [and] development services;

7. [(g)] Evaluation of a psychological or [and] human service program; or [programs; and]

8. [(h)] Supervision of health service delivery as described in 201 KAR 26:171.

(2) A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, or a psychological associate shall restrict his [is expected to restrict their] practice to the delivery of specific services for which he is competent based on professional education, training, and experience.

Section 5. Clinical Psychology. (1) Clinical psychological service shall refer [refers] to the application of principles, methods, or [and] procedures for understanding, predicting, preventing, or [and] alleviating intellectual, emotional, biological, psychological, social or [and] behavioral maladjustment, disability or [and] distress, applied to a wide range of client populations.

(2) A clinical psychologist may diagnose and assess [diagnoses and assesses] the following:

(a) The nature and causes of subjective distress or [and] psychopathology;

(b) A personal, social, or work dysfunction [and work dysfunctions];

(c) The psychological or [and] emotional factors involved in, or [and] consequent to, physical disease or [and] disability;

(d) Neuropsychological functioning;

(e) Substance use or [and] abuse;

(f) Sexual dysfunction; or [and]

(g) Physical and cognitive decline.

(3) Procedures may include:

(a) Interviewing;

(b) Behavioral assessment; or [and]

(c) Constructing, validating, administering or [and] interpreting a test of an intellectual or cognitive ability, aptitude, emotion, motivation, personality characteristic, a psychological aspect of physical illness, accident, injury, or disability, or other as-

pect of human experience or behavior [tests of intellectual and cognitive abilities, aptitudes, emotions, motivations, personality characteristics, the psychological aspects of physical illness, accident, injury or disability, and other aspects of human experience and behavior].

(4)(a) A clinical psychologist may intervene:

1. At the primary, secondary, or tertiary levels, including an intervention directed at preventing, treating or correcting the psychopathology, emotional conflict, personality disturbance, or skills deficit underlying distress or dysfunction; or

2. To promote:

a. Health or adjustment; or

b. The full range of individual, interpersonal, or social adaptation or health.

(b) An intervention may:

1. Reflect a variety of theoretical orientations, techniques, or modalities; and

2. Include psychotherapy, psychoanalysis, behavior therapy, cognitive therapy, interpersonal therapy, marital or family therapy, group therapy, a social learning approach, biofeedback, hypnosis, cognitive retraining or rehabilitation, or environmental consultation or design. [A clinical psychologist intervenes at the primary, secondary, and tertiary levels, including interventions directed at preventing, treating and correcting the psychopathology, emotional conflicts, personality disturbances, and skills deficits underlying distress and dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include, psychotherapy, psychoanalysis, behavior therapy, cognitive therapy, interpersonal therapy, marital and family therapy, group therapy, social learning approaches, biofeedback, hypnosis, cognitive retraining and rehabilitation, and environmental consultation and design. In addition to the treatment of diagnosed mental disorders, clinical psychology also includes interventions to promote health and adjustment. Clinical psychological intervention promotes the full range of individual, interpersonal, and social adaptation and health.]

(5) Within his area of expertise, a clinical psychologist may consult [consults] with a wide range of other professions or [and] individuals in many modes of consultation. The breadth of consultation by a clinical psychologist shall be [is] commensurate with the breadth of problems, populations, and procedures with which clinical psychology concerns itself.

(6) A clinical psychologist may supervise [supervises] a wide variety of health professionals or [and] health care professionals in training.

(7) A clinical psychology service may be provided in a variety of health or human service settings, including a psychiatric hospital, general medical hospital, mental health center, clinic, school, residential treatment center, correctional facility, the judicial system, or independent practice. [Clinical Psychology. (1) Clinical psychological services refers to description, evaluation, interpretation and modification of human behavior by the application psychological of principles, methods, and procedures for the purpose of preventing, eliminating, or reducing symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

(2) Direct [services are provided in a variety of health and human service settings including: psychiatric hospitals, general medical hospitals, community mental health centers, clinics, schools, residential treatment centers, correctional facilities, the judicial system, and independent practice.] [and private offices.

(3) Direct and supportive services are provided throughout the entire range of social, organizational, and academic institutions and agencies:

(4) Clinical psychological services include:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as:

1. Intelligence;
2. Personality;
3. Abilities;
4. Interests;
5. Aptitudes; and

6. Neuropsychological functioning;

(b) Psychotherapy;

(c) Counseling;

(d) Psychoanalysis;

(e) Hypnosis;

(f) Biofeedback and behavior analysis and therapy;

(g) Diagnosis and treatment of mental and emotional disorder or disability;

(h) Alcoholism and substance abuse disorders of habit or conduct;

(i) The psychological aspects of:

1. Physical illness;

2. Accident;

3. Injury; or

4. Disability;

(j) Psychoeducational evaluation, therapy, remediation, and consultation;

(k) Assessment directed toward diagnosing the nature and causes, and predicting the effects, of subjective distress; of personal, social and work dysfunction; and of the psychological and emotional factors involved in and consequent to, physical disease and disability. Procedures may include: interviewing, and administering and interpreting tests of intellectual abilities, attitudes, emotions, motivations, personality characteristics, psychoneurological status, and other aspects of human experience and behavior relevant to the disturbance;

(l) Interventions directed at identifying and correcting the emotional conflicts, personality disturbances, and skill deficits underlying a person's distress or dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include: psychotherapy, psychoanalysis, behavior therapy, marital and family therapy, group psychotherapy, hypnotherapy, social learning approaches, biofeedback techniques, and environmental consultation and design;

(m) Professional consultation in relation to assessment and intervention;

(n) Program development services in the areas of assessment, intervention, and consultation; and

(o) Supervision of clinical psychological services.]

Section 6. [5.] Scope of Practice - Counseling Psychology. (1) A counseling psychologist may facilitate personal or [facilitates personal and] interpersonal functioning across the life span with a focus on an emotional, social, vocational, educational, health-related, developmental or [and] organizational concern [concerns]. Counseling psychology may focus [focuses] on typical, as well as atypical or dysfunctional development as it applies to human experience from an individual, family, group, system, or organizational perspective [systems, and organizational perspectives]. Through the integration of theory, research, and practice, and with the awareness and skills to work with a diverse population [populations], counseling psychology shall encompass [encompasses] a broad range of practices that help a person improve his [people improve their] well-being, alleviate distress or [and] maladjustment, resolve a crisis, or [crises, and] increase his [their] ability to live a more highly functioning life [lives].

(2) The procedures and techniques used by a counseling psychologist may include:

(a) Individual, family, group or [and] systemic counseling or a [and] psychotherapeutic intervention [interventions];

(b) Crisis intervention, disaster or [and] trauma management;

(c) Psychodiagnostic or [and] assessment techniques;

(d) Psychoeducational or [and] preventive programming;

(e) Organizational consulting;

(f) Program or [and] treatment evaluation;

(g) Training;

(h) Clinical supervision;

(i) Test construction, validation, administration, or [and] interpretation; or [and]

(j) A methodology [Methodologies] for quantitative or [and] qualitative inquiry.

(3) An intervention procedure shall:

(a) Have as its focus change in a clinical cognition, feeling, or behavior;

(b) Be preventive, skill-enhancing or remedial; and

(c) Be either short-term or time-specified to a longer term. [Intervention procedures have as their focus change in clinical cognitions, feelings and behavior and may be preventive, skill enhancing or remedial. Intervention procedures may range from short term or time-specified to longer term approaches.] [Counseling psychology refers to services provided by counseling psychologists that apply principles, methods, and procedures for facilitating effective functioning during the life-span developmental process.]

(2) In providing these services, counseling psychologists shall approach practice with a significant emphasis on positive aspects of growth and adjustment and with a developmental orientation.

(3) These services are intended to help persons acquire or alter personal-social skills, improve adaptability to changing life demands, enhance environmental coping skills, and develop a variety of problem-solving and decision-making capabilities.]

(4) A counseling psychology service may be used by an individual, couple, or family to cope with a problem connected with education, career choice, work, sex, marriage, family, another social relation, health, aging, or a handicap of a physical or social nature. [Counseling psychology services are used by individuals, couples, and families of all age groups to cope with problems connected with education, career choice, work, sex, marriage, family, other social relations, health, aging, and handicaps of a physical or social nature.]

(5) A counseling psychology service may be provided in an educational, rehabilitational, or health institution, or a public or private agency, including a counseling center, psychiatric hospital, general medical hospital, mental health center, clinic, school, correctional facility, residential treatment center, the judicial system, or independent practice. [Counseling psychology [The] services are offered in a variety of settings such [organizations] as educational, rehabilitation, and health institutions and [in a variety of] other public and private agencies. These include:

- (a) Counseling centers;
- (b) Psychiatric hospitals;
- (c) General medical hospitals;
- (d) Mental health centers;
- (e) Clinics;
- (f) Schools;
- (g) Correctional facilities;
- (h) Residential treatment centers;
- (i) The judicial system; and
- (j) Independent practice.]

[(6) Counseling psychological services include the following:

- (a) Assessment, evaluation, and diagnosis;
- (b) Interventions with individuals and groups;
- (c) Professional consultation in relation to assessment and intervention;
- (d) Program development services in the areas of assessment, intervention, and consultation;
- (e) Supervision of counseling psychological services; and
- (f) Evaluation of all counseling psychological services.]

Section 7. [6:] Scope of Practice - School Psychology. (1) A school psychologist:

(a) Shall be concerned with the practice of psychology with children, youth, or families; learners of all ages; or the schooling process;

(b) May provide a range of psychological diagnosis or assessment, intervention, prevention, health promotion, or a program development or evaluation service with a special focus on the developmental process of a child or youth within the context of a school, family, or other system;

(c) Shall facilitate healthy growth and development through the promotion of a competent and effective educational, familial, or organizational system; and

(d) May serve a diverse population of clients in various settings, including a public or private school, educational agency, health care facility, youth correctional agency, social service department, special diagnostic center, child or family guidance center, community agency, hospital, the judicial system, or independent practice. [A school psychologist is concerned with the practice of psychology with children, youth, and families;

learners of all ages; and the schooling process. A school psychologist provides a range of psychological diagnosis and assessment, intervention, prevention, health promotion, and program development and evaluation services with a special focus on the developmental processes of children and youth within the contexts of schools, families, and other systems. In his work, a school psychologist facilitates healthy growth and development through the promotion of competent and effective educational, familial, and organizational systems. A school psychologist serves diverse populations of clients in various settings, including: public and private schools, educational agencies, health care facilities, youth correctional agencies, social service departments, special diagnostic centers, child and family guidance centers, community agencies, hospitals, the judicial system, and independent practice.]

(2) A school psychological assessment activity shall be [activities are] designed to evaluate the functioning of a child, youth, or adult using a technically adequate and valid procedure, which shall include the [children, youth, and adults using technically adequate and valid procedures. Procedures include] construction, validation, administration, or [and] interpretation of a screening, psychological or [and] educational test [tests] of intellectual functioning, cognitive development, affective behavior or [and] neuropsychological status, interview [interviews], observation, or [and] behavioral evaluation.

(3) A school psychological intervention shall be [interventions are] designed to facilitate the functioning of an individual or group [individuals or groups], including:

(a) Recommending, planning, or evaluating an education or mental health service [and evaluating education and mental health services];

(b) Psychoeducational therapy;

(c) Counseling;

(d) An effective educational program [Affective educational programs];

(e) Prevention programming;

(f) A skill development training program [programs];

(g) Facilitating an effective educational or mental health function of school or community agency personnel, a parent, or other care giver; [Facilitating effective educational and mental health functions of school and community agency personnel, parents, and other care-givers;]

(h) Planning, training, coordination, or evaluation of a program;

(i) Consultation or collaboration with school or community agency personnel or a parent concerning a specific problem of a child or youth or a professional problem of staff; [and evaluation of programs; consultation and collaboration with school and community agency personnel or parents concerning specific problems of children and youth and the professional problems of staff;]

(j) [Enhancing integration of services across system interfaces; or [and]

(k) [Program development services to an individual school, [schools, to] school administrative system, or [systems, and to] community agency [agencies]. [School psychology services refers to one (1) or more of the following services offered to clients involved in educational settings, from preschool through higher education, for the protection and promotion of mental health and the facilitation of learning. School psychological services include:

(1) Psychological and psychoeducational evaluation and assessment of the school functioning of children and young persons. Procedures include screening, psychological and educational tests of intellectual functioning, cognitive development, affective behavior, and neuropsychological status, interviews, observation, and behavioral evaluations;

(2) Interventions to facilitate the functioning of individuals or groups, including: recommending, planning, and evaluating special education services; psychoeducational therapy; counseling; affective educational programs; and training programs to improve coping skills;

(3) Interventions to facilitate the educational services and child care functions of school personnel, parents, and community agencies;

(4) Consultation and collaboration with school personnel or parents concerning specific school-related problems of students and the professional problems of staff.

- (5) Program development services to individual schools, to school administrative systems, and to community agencies;
- (6) Supervision of school psychological services.]

DONALD E. RALPH, Ph.D., Chairman
 MARK BRENGELMAN, Legal Counsel
 APPROVED BY AGENCY: July 10, 1998
 FILED WITH LRC: July 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, September 8, 1998)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050(7)
 STATUTORY AUTHORITY: KRS 319.032(2)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) provides that the designation of "health service provider" shall be granted for a licensed psychologist [those licensed psychologists] who delivers or supervises a direct health care service [deliver or supervise direct health care services]. This administrative regulation establishes [clarifies] the requirements for the granting of that designation. [Certain terms are used in the statute regulating the requirements for health service provider designation. This administrative regulation defines those terms:

Section 1. [For purposes of this administrative regulation,] The designation "health service provider" shall refer to:

(1) A licensed psychologist [those persons] defined in KRS 319.050(7) who:

(a) Delivers direct health care services; or
 (b) [who] Supervises a certified psychologist, temporary licensed psychologist, psychological associate, student, intern, or resident pursuing a course of graduate study in psychology; or

(2) An applicant [or the supervision of certified psychologists, psychological associates, or applicants] for licensure or certification who is [are] delivering direct health care services.

Section 2. Direct health care services shall include the:

(1) Delivery of direct diagnosis, assessment, psychotherapy, treatment, or [and] other therapeutic intervention services to individual or group [individuals or groups] whose growth, adjustment, or functioning is impaired or who otherwise seeks a service; [seek such services;] and

(2) [the] Delivery of indirect prevention or [and] health promotion activities.

Section 3. A health care provider shall be a licensed psychologist who has completed appropriate training and supervised experience in health service delivery at the doctoral level. The training and experience:

(1) Shall include supervised experience within one (1) or more health care settings in which the provider delivered direct health care services, pursuant to Section 2 of this administrative regulation; and

(2) May occur in a variety of settings, including a hospital, clinic, counseling center, school, mental health center, community agency, correctional facility, the judicial system, residential treatment center, or independent practice. [A health care provider is a licensed psychologist who has completed appropriate training and supervised experience in health service delivery at the doctoral level. The training and experience shall include supervised experience within one (1) or more health care settings, defined broadly as those concerned with the delivery of direct diagnosis, assessment, psychotherapy, treatment, and other therapeutic intervention services to individuals and groups whose growth, adjustment or functioning is impaired or who otherwise seek services, and the delivery of indirect prevention and health promotion activities. The settings include hospitals, clinics, counseling centers, schools, mental health centers, community agencies, correctional facilities, the judicial system, residential treatment centers, and independent

practice.]

Section 4. A licensed psychologist who does not have the designation "health service provider" shall not deliver or supervise direct health care services.

(1) A psychologist [Those psychologists] [granted licensure] in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider".

(2) A licensed psychologist with training and experience in health service specialty areas other than [that] clinical counseling, or school may request the board to review his credentials to determine his eligibility for this designation.

(3) In addition to completion of a doctoral training program in an area of health service delivery, a candidate [candidates] shall complete required predoctoral and postdoctoral supervised experience requirements in a health care setting as established in this administrative regulation, that are consistent with the requirements of 201 KAR 26:190.

DONALD E. RALPH, Ph.D., Chairman
 MARK BRENGELMAN, Legal Counsel
 APPROVED BY AGENCY: July 15, 1998
 FILED WITH LRC: July 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, September 8, 1998)

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

RELATES TO: KRS 319.032(1)(i)
 STATUTORY AUTHORITY: KRS 319.032(1)(i)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license or certificate through reciprocity. This administrative regulation establishes the requirements for licensure or certification by reciprocity.

Section 1. The board shall issue a license or certificate to an applicant who qualifies for a license or certificate pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure or certification in psychology by reciprocity shall:

(1) Hold a current valid license or certificate in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:

(a) That is a constituent member of the Association of State and Provincial Psychology Boards; and

(b) With whom this board has an agreement of reciprocity;

(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(3) Not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure does not have a postdoctoral supervised year of experience as required by KRS 319.050(2)(a), the board may determine that the applicant's practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional

Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology or a successor organization shall:

(1) Be [any of its successor organizations is] deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation with the exception of the requirements established in Section 3 of this administrative regulation; and

(2) [-An applicant for licensure under this section shall be required to] Meet the requirements established in Section 3 of this administrative regulation.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for
Professional Art Therapists
(As Amended at ARRS, September 8, 1998)**

201 KAR 34:030. Continuing education requirements.

RELATES TO: KRS 309.1335(1)(b)

STATUTORY AUTHORITY: KRS 309.1315(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1335(1)(b) authorizes the board to promulgate an administrative regulation requiring professional art therapists to complete continuing education requirements as a condition of renewal of their certification. 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) "Academic courses offered by an accredited postsecondary institution" means:

(a) An art therapy course, designated by an art therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to professional art therapy, beyond the undergraduate level.

(2) "Approved" means recognized by the Kentucky Board of Certification of Professional Art Therapists.

(3) [(2)] "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(4) [(3)] "Program" means an organized learning experience;

(a) Planned and evaluated to meet behavioral objectives; and

(b) [programs may be] Presented in one (1) session or [in a] series.

[(4)] "Academic courses offered by an accredited postsecondary institution" means:

(a) An art therapy course, designated by an art therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to professional art therapy, beyond the undergraduate level.

General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Provider" means an organization approved by the Kentucky Board of Certification for Professional Art Therapists for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of professional art therapy as determined by the board. Relevant continuing education activities shall be in the following content areas in order to be considered relevant:

(a) Psychological and psychotherapeutic theories and practice;

(b) Art therapy assessment;

(c) Art therapy theory and practice;

(d) Client populations;

(e) Art theory and media; and

(f) Professionalism and ethics.

[(6)] "Provider" means an organization approved by the Kentucky

Board of Certification for Professional Art Therapists for providing continuing education programs.]

(7) "Successful completion" means that the certificate holder has:

(a) Satisfactorily met the specific requirements of the program; and

(b) [the certificate holder has] Earned the continuing education hours.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of forty (40) continuing education hours shall be accrued by each person holding certification during the two (2) year certification period for renewal.

(2) All hours shall be in or related to the field of professional art therapy.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a professional art therapy practitioner. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided or approved by any of the following providers shall be deemed to be relevant to the practice of professional art therapy and shall be approved without further review by the board:

(a) The American Art Therapy Association or any of its state affiliates;

(b) The Art Therapy Certification Board;

(c) The American Association of Marriage and Family Therapy and its state affiliates;

(d) The National Association of Social Workers and its state affiliates;

(e) The American Psychological Association and its state affiliates;

(f) The American Counseling Association and its state affiliates;

(g) The National Board of Certified Counselors; and

(h) Academic courses as set forth in Section 1(4) of this administrative regulation. A general education course, elective or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it is relevant:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or service provider approved by the board; [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) A program or academic course [Relevant programs or academic courses] presented by the certificate holder. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) A publication [Relevant publications] in a professionally recognized or juried publication. Continuing education hours shall be granted for a relevant publication [relevant publications] as follows:

1. Five (5) continuing education hours for each published abstract or book review;

2. Ten (10) continuing education hours for each published article;

3. Twenty (20) continuing education hours for each book chapter or monograph; and

4. Forty (40) continuing education hours for each published book; and

(d) An exhibition [Exhibitions] in a juried art show. An exhibitor at a juried art show shall earn ten (10) continuing education hours for each exhibition.

Section 4. Procedures for Preapproval of Continuing Education

Sponsors and Programs. (1) Any entity seeking to obtain approval 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 5 of this administrative regulation.

(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 art therapy;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has [Courses which have] not been preapproved [by the board] may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program: [for such courses, in order for the board to adequately review these programs the following information shall be submitted:]

- (a) [(1)] A published course or seminar description;
- (b) The name and qualifications of the instructor; [(2) Names and qualifications of the instructors;]
- (c) [(3)] A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (d) [(4)] Number of continuing education hours requested;
- (e) [(5)] Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) [(6)] Application for continuing education credits approval.

Section 6. Responsibilities and Reporting Requirements of Certificate Holders. (1) During the certification renewal period, the board shall require up to fifteen (15) percent of all certificate holders to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A certificate holder shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify his own continuing education needs and seek activities that meets those needs;
- (c) Seek ways to integrate new knowledge, skills and activities;
- (d) Select approved activities by which to earn continuing education hours;
- (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
- (f) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years from the date of the renewal; and
- (g) Maintain records of continuing education hours;

(3) The following items may be used to document continuing education activity:

- (a) Transcript;
- (b) Certificate;
- (c) Affidavit signed by the instructor;
- (d) Receipt for the fee paid to the sponsor;
- (e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:

- (a) Refusal to renew certification;
- (b) Suspension of certification; or
- (c) Revocation of certification. [A certificate holder shall be responsible for obtaining required continuing education hours. Each person holding certification 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 certification shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for approval for continuing education activities not approved by the board as set forth in Section 3(2) of this administrative regulation;

(3) Maintain records of continuing education hours. Each person holding certification shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all certificate holders 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. Verification of continuing education hours shall not otherwise be reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and may result in the refusal to renew, suspension, or revocation of the certification.]

Section 7. Carry-over of Continuing Education Hours, Prohibited. [There shall not be a carry-over of] Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following certification renewal period.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or in part, the person holding certification shall have the right to appeal the board's decision.

(2) An appeal shall be:

- (a) In writing;
- (b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
- (c) Conducted in accordance with KRS Chapter 13B. [when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding certification shall have the right to request reconsideration by the board of its decision. The request shall be in writing and notice of appeal 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) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability of the certificate holder;
- (b) Illness of the certificate holder or an immediate family member;
- (c) Death or serious injury of an immediate family member.

[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 same or make the required reports.]

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

- (a) Submitted by the person holding certification; and
- (b) [shall be] Accompanied by a verifying document signed by a licensed physician.

(3) A wavier or extension of time within which to fulfill the minimum continuing education requirements shall not exceed

~~one (1) year. [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 certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement or reactivation of certification shall submit evidence of forty (40) 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) If the board reinstates certification, the person shall obtain forty (40) hours of continuing education within six (6) months of the date on which certification is reinstated. [The person may request, and the board, at its discretion, may reinstate the certification, with the provision that the person shall receive forty (40) hours continuing education within six (6) months of the date on which the certification is reinstated.]~~

(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.

HELEN L. HEDDENS, Chairman

ROB JONES, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

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**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for
Professional Art Therapists
(As Amended at ARRS, September 8, 1998)**

201 KAR 34:040. Code of ethics.

RELATES TO: KRS 309.1315(14)

STATUTORY AUTHORITY: KRS 309.1315(1), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for certified professional art therapists. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Patients. (1) A professional art therapist shall:

(a) Advance and protect the welfare of the patient;
(b) Respect the rights of a person [persons] seeking assistance;

(c) Make reasonable efforts to ensure that services are used appropriately; and

(d) Display a copy of his certificate in the principle place of business.

(2) A professional art therapist shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of:

1. Race;

2. Gender;

3. Religion; or

4. National origin; [race, gender, religion, national origin, or sexual orientation;]

(b) Exploit the trust and dependency of a patient;

(c) Engage in a dual relationship with a patient, including a social, business, or personal relationship that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the patient; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the patient, or otherwise violate a provision of this administrative regulation, a

therapist shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the patient does not occur.

(d) Engage in a sexual relationship with a current patient or with a former patient for two (2) years following the termination of therapy;

(e) Use the professional relationship with a patient to further personal interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the patient is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the therapist is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a patient in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of therapy sessions without having first obtained written informed consent from the patient;

(j) Engage in sexual or other harassment or exploitation of a patient, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A professional art therapist shall respect and guard the confidences of each individual patient.

(2) A professional art therapist shall not disclose a patient confidence except:

(a) As mandated, or permitted by law.

(b) To prevent a clear and immediate danger to a person. [or persons;]

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy at which the professional art therapist is a defendant. [If the professional art therapist is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or]

(d) In accordance with the terms of a written informed consent agreement. [If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.]

(3) A professional art therapist may use patient or clinical materials in teaching, writing, and public presentations if:

(a) Written informed consent has been obtained in accordance with subsection (1)(d) of this section; or

(b) Appropriate steps have been taken to protect patient identity and confidentiality.

(4) A professional art therapist shall store or dispose of patient records so as to maintain confidentiality.

Section 3. Public Use and Reproduction of Patient Art Expression and Therapy Sessions. (1) An art therapist [Art therapists] shall obtain written informed consent from the patient or a legal guardian, if applicable, before:

(a) Photographing or videotaping a patient's art expression;

(b) Making an audio recording of an art therapy session;

(c) Permitting third-party observation of an art therapy session; or

(d) Duplication of an art therapy session in any matter. [; where applicable, a legal guardian before photographing patients' art expressions, video taping, audio recording, or otherwise duplicating, or permitting third-party observation of art therapy sessions.]

(2) An art therapist shall not [Art therapists shall only] use clinical materials in teaching, writing and public presentations unless [if] written informed consent has been previously obtained from the patient or, if [where] applicable, a legal guardian. Appropriate steps shall be taken to protect patient identity and disguise any part of the art expression or video tape, which reveals patient identity.

(3) An art therapist [Art therapists] shall obtain written, informed consent from a patient or legal guardian, if applicable, before displaying the patient's art in a:

(a) Gallery;

(b) Mental health facility;

(c) School; or

(d) Another public place. [the patient or, where applicable, a legal guardian before displaying patients' art in galleries, in mental health facilities, schools, or other public places;]

(4) An art therapist shall display a patient's [Art therapists shall display patients'] art expression in an appropriate and dignified manner.

Section 4. Professional Competence and Integrity. A professional art therapist 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 professional art therapist;

(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 professional art therapy;

(4)] Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of a certificate;

(2) [(5)] Refusing to comply with an order issued by the board;
or

(3) [(6)] Failing to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to a subpoena [subpoenas] issued by the board.

Section 5. Responsibility to a Student or Supervisee. **A professional art therapist shall:**

(1) Be aware of his influential position with respect to a student or supervisee;

(2) Avoid exploiting the trust and dependency of a student or supervisee;

(3) Try to avoid a social, business, personal, or other dual relationship that could:

(a) Impair professional judgment; and

(b) Increase the risk of exploitation;

(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(5) Not provide therapy to a:

(a) Student;

(b) Employee; or

(c) Supervisee;

(6) Not engage in sexual intimacy or contact with a:

(a) Student; or

(b) Supervisee;

(7) Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:

(a) Training;

(b) Experience; or

(c) Competence;

(8) Not disclose the confidence of a student or supervisee unless:

(a) Permitted or mandated by law;

(b) It is necessary to prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional art therapist is a defendant;

(d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee;

(e) In accordance with the terms of a written informed con-

sent agreement. [(1) A professional art therapist shall not exploit the trust and dependency of a student or supervisee.

(2) A professional art therapist shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons:

1. A professional art therapist shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation;

2. If a dual relationship cannot be avoided, a therapist shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs;

3. A therapist shall not provide therapy to a student, employee or supervisee;

4. A therapist shall not engage in sexual intimacy or contact with a student or supervisee;

(3) A professional art therapist shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence;

(4) A professional art therapist shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist is a defendant in a civil, criminal, or disciplinary action arising from the supervision;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is written informed consent previously obtained in writing, information shall be revealed only in accordance with the terms of the consent agreement.]

Section 6. Responsibility to Research Participants. (1) A professional art therapist performing research shall be aware of federal and state laws and regulations and professional standards governing the conduct of research.

(2) A professional art therapist performing research shall:

(a) Be responsible for making a careful examination of ethical acceptability in planning a study;

(b) Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and

(c) Observe safeguards to protect the rights of a participant.

[A professional art therapist performing research shall be responsible for making careful examinations of ethical acceptability in planning studies. To the extent that services to research participants may be compromised by participation in research, a professional art therapist, shall seek the ethical advice of qualified professionals not directly involved in the investigation and shall observe safeguards to protect the rights of research participants.]

(3) A professional art therapist requesting a participant's involvement in research shall:

(a) Inform him of all aspects of the research that might reasonably affect his willingness to participate; and

(b) Be sensitive to the possibility of diminished consent if the participant:

1. Is also receiving clinical services;

2. Has an impairment which limits understanding or communication; or

3. Is a child. [A professional art therapist requesting participants' involvement in research shall inform them of all aspects of the research that might reasonably be expected to influence willingness to participate. A professional art therapist shall be sensitive to the possibility of diminished consent when participants are also receiving clinical services, have impairments which limit understanding or communication, or when participants are children.]

(4) A professional art therapist performing research shall respect a participant's [participants'] freedom to decline participation in or to withdraw from a research study at any time. [This obligation requires special thought and consideration when a professional art

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therapist or other member of the research team is in a position of authority or influence over participants.]

(5) A professional art therapist shall avoid a dual relationship with a research participant. [~~dual relationships with research participants~~]

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. The following shall be explained to the participant before obtaining written, informed consent:

(a) A risk that another person, including a family member, could obtain access to the information; and

(b) The plan to be used to protect confidentiality. [When there is a risk that others, including family members, may obtain access to such information, this risk, together with the plan for protecting confidentiality, is to be explained as part of the procedure for obtaining written informed consent.]

Section 7. Financial Arrangements. A professional art therapist shall:

(1) Not charge an excessive fee for service;

(2) Disclose his fees to a client and supervisee at the beginning of service;

(3) Make financial arrangements with a patient, third-party payer, or supervisee that:

(a) Are reasonably understandable; and

(b) Conform to accepted professional practices;

(4) Not offer or accept payment for a referral;

(5) Represent facts truthfully to a client, third-party payer, or supervisee regarding services rendered.

Section 8. Advertising. (1) A professional art therapist shall:

(a) Accurately represent education, training, and experience relevant to the practice of professional art therapy;

(b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:

1. A business card;

2. An office sign;

3. Letterhead;

4. Telephone or association directory listing.

(2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Is intended to or likely to create an unjustified expectation;

(c) Deletes a material fact or information. [(1) A professional art therapist shall make financial arrangements with a patient, third-party payer, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A professional art therapist shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third-party payers, and supervisees regarding services rendered.

Section 8. Advertising. A professional art therapist shall:

(1) Accurately represent education, training, and experience relevant to the practice of professional art therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.]

Section 9. Environment. A professional art therapist shall pro-

vide a safe, functional environment in which to offer art therapy services. This shall include [includes] the following:

(1) Proper ventilation;

(2) Knowledge of hazards or toxicity of art materials, and the effort needed to safeguard the health of a client [clients];

(3) Storage space for art projects and secured areas for hazardous material [any hazardous materials];

(4) Monitored use of sharps;

(5) Allowance for privacy and confidentiality; and

(6) Compliance with any other health and safety requirement according to local, state, and federal agencies.

Section 10. Documentation. A professional art therapist shall accurately document activity with a patient [patients].

HELEN L. HEDDENS, Chairman

ROB JONES, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

GENERAL GOVERNMENT CABINET

Kentucky Board of Certification for

Professional Counselors

(As Amended at ARRS, September 8, 1998)

201 KAR 36:020. Fees – renewal date.

RELATES TO: KRS 335.535(1), (2), (4) [335.525(2), 335.530(1), (2), (4)]

STATUTORY AUTHORITY: KRS 335.515(3), 335.525(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) and 335.525(2) requires the board to promulgate administrative regulations relating to the establishment of fees. This administrative regulation establishes the application, renewal, and reinstatement fees for a professional counselor and the date that certification must be renewed. [This administrative regulation is necessitated by KRS 335.525(2), 335.530(1), (2), and (4) and sets forth in detail all fees charged by the board and the date on which a certificate is to be renewed.]

Section 1. Application Fee. (1) The application fee for certification as a professional counselor shall be \$150.

(2) If the application is denied, \$125 of the application fee shall be refunded.

Section 2. Renewal Fees and Penalties. (1) The annual renewal fee for certification shall be \$150;

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be twenty-five (25) dollars; and

(3) The reinstatement fee for licensure or certification renewal after the end of the sixty (60) day grace period shall be fifty (50) dollars.

(4) Renewal and reinstatement fees shall not be refundable.

Section 3. Renewal Date. (1) The renewal date for certification shall be October 31.

(2) The renewal fee for the first renewal shall be waived for a person receiving certification within 120 days prior to the renewal date.

TIMOTHY C. ROBERTSON, M.A., Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 13, 1998

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GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for
Professional Counselors
(As Amended at ARRS, September 8, 1998)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 335.535(8)

STATUTORY AUTHORITY: KRS 335.515(3)(6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.535(8) authorizes the board to promulgate an administrative regulation requiring a certified professional counselor to complete continuing education requirements as a condition of renewal of his certification. 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) "Academic courses offered by an accredited postsecondary institution" means:

(a) A professional counseling course, designated by a professional counseling title or content; or

(b) An academic course, relevant to professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Certification for Professional Counselors.

(3) [(2)] "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(4) [(3)] "Program" means an organized learning experience;

(a) Planned and evaluated to meet behavioral objectives; and

(b) [programs may be] Presented in one (1) session or [in] a series.

[(4)] "Academic courses offered by an accredited postsecondary institution" means:

(a) ~~A professional counseling course designated by a professional counseling title or content; or~~

(b) ~~An academic course, relevant to professional counseling.~~

(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) "Provider" means an organization approved by the Kentucky Board of Certification for Professional Art Therapists for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of professional counseling as determined by the board.

[(6)] "Provider" means an organization approved by the Kentucky Board of Certification for Professional Counselors for providing continuing education programs.]

Section 2. Accrual of Continuing Education Hours[; Computation of Accrual]. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding certification during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

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 certified professional counselor. 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 professional counseling and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Board for Certified Counselors;

(b) Sponsored by:

1. The American Counseling Association, or any of its affiliated branches or divisions;

2. The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

3. The National Association of Social Workers or any of its affiliated state chapters;

4. The American Association of Marriage and Family Therapy or any of its affiliated state chapters;

5. The National Association of School Counselors or any of its affiliated state chapters;

6. The American Psychological Association, or any of its affiliated state chapters or divisions;

(c) An academic course offered by an accredited post-secondary institution directly related to professional counseling or counseling psychology;

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or service provider approved by the board; [Relevant programs, including home study and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;]

(b) A program or academic course presented by the certificate holder [Relevant programs or academic courses presented by the certificand]. 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 shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a certificate holder shall not earn more than one-half (1/2) of the continuing education hours required for renewal. Not more than one (1) publication shall be counted during a renewal period.

(3) A general education course, elective, or designed to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours. [may be granted only for an article that was published within the one (1) year period immediately preceding the renewal date. A certificand may only earn one-half (1/2) of the continuing education hours required for renewal. 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 these programs, 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 to the board 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(2) of this administrative regulation.

tion; and

2. Does not exclude a certificate holder [any certificand] 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 professional counseling;

(c) Contributes to the professional competency of the certificand; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 6. Responsibilities and Reporting Requirements of a Certificate Holder. (1) During the certification renewal period, up to fifteen (15) percent of all certificate holders shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A certificate holder shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his own continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills and attitudes;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;

(f) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(g) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(h) Maintain records of continuing education hours;

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor; or

(d) Receipt for the fee paid to the sponsor;

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:

(a) Refusal to renew certification;

(b) Suspension of certification; or

(c) Revocation of certification.

(5) Documentation sent to the board prior to renewal shall be returned to the certificate holder by regular mail. [of Certificands. Each certificand 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 certification 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 certification shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) During the annual certification renewal period, up to fifteen

(15) percent of all certificands 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 certificand 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 and Sponsors. (1) A provider [Providers] of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(4) of this administrative regulation, directly to the certificate holder [certificand].

(2) A sponsor [Sponsors] 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 of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B. [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) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the certificate holder;

(b) Illness of the certificate holder or an immediate family member;

(c) Death or serious injury of an immediate family member.

[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:

(a) Submitted by the person holding certification; and

(b) [shall be] Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year. [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 certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement

ment or Reactivation of Certification. (1) A person requesting reinstatement or reactivation of certification shall submit evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the board reinstates certification, the person shall obtain forty (40) hours of continuing education within six (6) months of the date on which certification is reinstated. [The person may request, and the board, at its discretion, may reinstate the certification, with the provision that the person shall receive ten (10) hours continuing education within six (6) months of the date on which the certification is reinstated.]

(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.

TIMOTHY C. ROBERTSON, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for
Professional Counselors
(As Amended at ARRS, September 8, 1998)**

201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.515(11), 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code of ethics for certified professional counselors. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A professional counselor shall:

- (a) Advance and protect the welfare of his client;
- (b) Respect the rights of a person [persons] seeking his assistance; and
- (c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:

- (a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;
- (b) Exploit the trust and dependency of a client;
- (c) Engage in a dual relationship with a client, including a social, business, or personal relationship that may:

- 1. Impair professional judgment;
- 2. Incur a risk of exploitation of the client; or
- 3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of counseling;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed con-

sent from the client;

(j) Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) Professional counselors shall not disclose a client confidence except:

(a) As mandated, or permitted by law.

(b) To prevent a clear and immediate danger to a person. [or persons;]

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant. [If the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the counseling, confidences may be disclosed only in the course of that action; or]

(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless he has obtained a waiver from that individual family member. If the family member is a minor, a parent may provide a waiver. [If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives counseling, unless a waiver is executed by each family member receiving counseling, who is legally competent to execute a waiver, a professional counselor shall not disclose information received from any family member.]

(3) A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) A professional counselor shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a professional counselor;

(b) Conviction shall include adjudication based on:

- 1. A plea of no contest or an "Alford Plea"; or
- 2. The suspension or deferral of a sentence.

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of professional counseling;

(4) If he misrepresented or concealed a material fact in obtaining a certificate, renewing a certificate, or reinstating a certificate;

(5) If he has refused to comply with an order issued by the board; or

(6) He has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to His Student or Supervisee. A professional counselor shall:

(1) Be aware of his influential position with respect to a student or supervisee;

(2) Avoid exploiting the trust and dependency of a student

or supervisee;

(3) Try to avoid a social, business, personal, or other dual relationship that could:

(a) Impair professional judgment; and

(b) Increase the risk of exploitation;

(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(5) Not provide counseling to a:

(a) Student;

(b) Employee; or

(c) Supervisee;

(6) Not engage in sexual intimacy or contact with a:

(a) Student; or

(b) Supervisee;

(7) Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:

(a) Training;

(b) Experience; or

(c) Competence;

(8) Not disclose the confidence of a student or supervisee unless:

(a) Permitted or mandated by law;

(b) It is necessary to prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;

(d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee;

(e) In accordance with the terms of a written informed consent agreement. [(1) A professional counselor shall not exploit the trust and dependency of his student or supervisee.

(2) A professional counselor shall:

(a) Be aware of his influential position with respect to his student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons:

1. A professional counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with his student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a professional counselor shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A professional counselor shall not provide counseling to his student, employee or supervisee.

4. A professional counselor shall not engage in sexual intimacy or contact with his student or supervisee.

(3) A professional counselor shall not permit his student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A professional counselor shall not disclose his student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) To other professional colleagues who share responsibility for the training of the supervisee in educational or training settings if there are multiple supervisors; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.]

Section 5. Financial Arrangements. A professional counselor shall:

(1) Not charge an excessive fee for service;

(2) Disclose his fees to a client and supervisee at the be-

ginning of service;

(3) Make financial arrangements with a patient, third-party payor, or supervisee that:

(a) Are reasonably understandable; and

(b) Conform to accepted professional practices;

(4) Not offer or accept payment for a referral;

(5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered. [(1) A professional counselor shall make financial arrangements with a client, third-party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A professional counselor shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third-party payors, and supervisees regarding services rendered.]

Section 6. Advertising. (1) A professional counselor shall:

(a) Accurately represent education, training, and experience relevant to the practice of professional counseling;

(b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:

1. A business card;

2. An office sign;

3. Letterhead;

4. Telephone or association directory listing.

(2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Is intended to or likely to create an unjustified expectation;

(c) Deletes a material fact or information. [A professional counselor shall:

(1) Accurately represent his education, training, and experience relevant to his practice of professional counseling;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.]

TIMOTHY C. ROBERTSON, M.A., Chairman

JAMES GRAWE, Legal Counsel

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GENERAL GOVERNMENT CABINET

Kentucky Board of Certification for

Professional Counselors

(As Amended at ARRS, September 8, 1998)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)[, 335.540]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor. [KRS 335.515(7) and 335.540 authorize the board to take disciplinary action in regard to a certificand or to refuse to issue a certification under certain circumstances. A complaint or other information com-

ing to the board requires the board to investigate persons engaging in practices that violate the provisions of KRS 335.500 to 335.599. 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 335.500 to 335.599; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS 335.500 to 335.599, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) **"Complaint screening 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. The executive director of the board or another staff member may be appointed to serve on this committee.**

(5) "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 or civil action.

(6) [(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.

(7) [(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) "Complaint screening 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. The executive director of the board or another staff member may be appointed to serve on this committee.]

Section 2. Receipt of Complaints. (1) **A complaint:**

(a) May be submitted by an:

- 1. Individual;**
- 2. Organization; or**
- 3. Entity.**

(b) Shall be:

- 1. In writing; and**
- 2. Signed by the person offering the complaint.**

(c) May be filed by the board based upon information in its possession. [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 seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening 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) **If the board determines before formal investigation that**

a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision. [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) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity. [When in the opinion of the board a complaint warrants a formal investigation against either a certified individual or a person who may be in violation of KRS 335.505, the board shall authorize an investigator to investigate the matter and make a report to the complaint screening committee at the earliest opportunity.]

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 complaint screening 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 has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision. [When in the opinion of the board a complaint does not warrant the issuance of a formal complaint, the complaint shall be dismissed or other appropriate action taken pursuant to KRS 335.540(3). The board shall notify both the complaining party and the individual of the outcome of the complaint.]

(3) If the board determines that [When in the opinion of the board] **a complaint warrants the issuance of a formal complaint against a respondent [certificand], the complaint screening 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) If the board determines that a person may be in violation, it shall: [When in the opinion of the board a person may be in violation of KRS 335.505, it may:]

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening 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.

(2) **An [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.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service Process. **A [Any]** notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS

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335.540(3); and

(2) An [Any] action to restrain or enjoin a violation of KRS 335.505.

TIMOTHY C. ROBERTSON, M.A., Chairman
JAMES GRAWE, Legal Counsel
APPROVED BY AGENCY: July 10, 1998
FILED WITH LRC: July 13, 1998 at 4 p.m.

KENTUCKY LOTTERY CORPORATION
(As Amended at ARRS, September 8, 1998)

202 KAR 3:030. Retailer administrative regulation.

RELATES TO: KRS 154A.400 [~~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 incorporates by reference [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. An applicant for a retailer license, a retailer of instant tickets, or an on-line retailer of the Kentucky Lottery Corporation shall comply with the requirements established in the Kentucky Lottery Corporation Retailer 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. Incorporation by Reference. (1) The "Kentucky Lottery Corporation Retailer Administrative Regulations, August 14, 1998, edition, is [as promulgated on January 30, 1998, and revised on April 24, 1998 and July 24, 1998] are] incorporated [herein] by reference.

(2) This material [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.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 8, 1998)

301 KAR 1:090. Bow fishing.

RELATES TO: KRS 150.025(1), 150.175, 150.360
STATUTORY AUTHORITY: KRS [~~13A-350;~~] 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of any device used for taking wildlife, the method of taking, and the places where taking is permitted. The purpose of this administrative regulation is to define and limit bow fishing. It is necessary to protect the sport fish

population of the state. [The commissioner, with the concurrence of the commission, finds it necessary to amend this administrative regulation to provide for night bow fishing and to include trout streams as prohibited bow fishing waters.]

Section 1. Definitions. (1) "Bow and arrow" means a:
(a) Longbow;
(b) Compound bow; or
(c) Crossbow.
(2) "Catfish" means a member of the family Ictaluridae.

Section 2. A person shall not take with a bow and arrow:

(1) Sport fish, as listed in Section 1 of 301 KAR 1:060.
(2) Fish without scales, except catfish, at night;
(a) Without scales, except catfish, at night;
(b) From the waters listed in Section 5 of 301 KAR 1:075; or
(c) Downstream for 700 yards below Kentucky Dam.]
(3) Fish from the waters:
(a) Listed in Section 5 of 301 KAR 1:075; or
(b) Downstream for 700 yards below Kentucky Dam.
(4) More than five (5) catfish daily. [Definition. The words "bow and arrow" as used in this administrative regulation means any long bow or cross-bow with an arrow or bolt with one or more barbs.]

Section 2. Permitted Conditions and Waters. (1) Rough fish may be taken year-round by bow and arrow with line attached, except only rough fish having scales may be taken during nighttime hours, from all waters except as specified in subsection (2) of this section.

(2) No bow and arrow may be used within 700 yards below Kentucky Dam or within 200 yards of any other dam in the state. Also excluded for bow fishing are all waters designated as prohibited waters for gigging and snagging in Section 5 of 301 KAR 1:075 (trout waters).

(3) All persons using the bow and arrow for fishing are required to have an appropriate fishing license and may take rough fish from either the bank or from a boat. There is no limit on the number of rough fishes taken.]

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: July 15, 1998 at 10 a.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 8, 1998)

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1) [~~13A-350, 150.450~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to prescribe by administrative regulation the methods and devices used to take wildlife, as well as the buying and selling of wildlife. The function of this administrative regulation is to regulate taking fish for commercial use, to avoid conflicts with other interests, and to utilize and conserve the populations of these fishes. [This amendment is necessary to allow commercial fishermen to have unlicensed helpers and to bring this administrative regulation into compliance with the wording and format requirements of KRS Chapter 13A.]

Section 1. Definitions. (1) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(2) "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(3) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(4) "Sport fish" means those species so designated by 301 KAR

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1:060.

(5) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than one (1) unlicensed helper.

(2) An unlicensed helper shall not use commercial fishing gear or sell fish unless he is accompanied by a licensed commercial fisherman.

Section 3. Tagging And Using Commercial Gear. A person shall:

(1) ~~[Persons shall]~~ Tag commercial gear so that a law enforcement officer [officers] can find and read the tag without undue difficulty.

(2) ~~[Persons shall]~~ Not use commercial gear:

(a) Within fifty (50) yards of the outlet or inlet of an overflow lake.

(b) Within fifty (50) yards of the mouth of a stream except the mouth of the Ohio River.

~~[(c) Within 200 yards below a dam.]~~

(3) ~~[From April 1 through October 31, persons shall]~~ Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; and

(b) For a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Sport Fish and Endangered Species. A person [Persons] taking a sport fish or an endangered species by commercial gear shall immediately return the fish, without undue injury, to the waters from which it was taken.

Section 5. Tending Gear and Removing Fish. A person shall:

(1) ~~[Commercial fishermen shall]~~ Tend and remove the fish from:

(a) Baited hoop nets or slat traps at least every seventy-two (72) hours.

~~(b) [(2) Commercial fishermen shall tend and remove the fish from]~~ Other commercial fishing gear at least every twenty-four (24) hours.

~~(2) [(3) Fishermen shall]~~ Remove commercial fishing gear from the water when he has [they have] finished fishing.

~~[(4) The department may confiscate gear abandoned, not tended regularly, or otherwise used contrary to the statutes and administrative regulations governing commercial fishing.]~~

Section 6. Reporting. Beginning March 1, 1999:

(1) A commercial fisherman shall report his catch monthly to the department:

(a) By the tenth day of each month;

(b) On forms provided by the department.

(2) The department shall not renew the license of a commercial fisherman who does not submit:

(a) A report for each month of the license year, including a month during which he did not fish; or

(b) The information required on the report form.

(3) The report form shall include the following information, if applicable:

(a) Days of month fished;

(b) Water body fished;

(c) Kind of gear used, including:

1. Gill net;

2. Trammel net;

3. Hoop net;

4. Fishing pole;

5. Trot line;

6. Slat trap;

7. Seine; and

8. Dip net; and

(d) Weight of the catch by species.

Section 7. Incorporation by Reference. (1) The Monthly Report of Commercial Fish Harvest in Kentucky, 1998 edition, is incorporated by reference.

(2) It may be obtained or copied at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m. on normal business days.

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: July 15, 1998 at 11 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, September 8, 1998)

301 KAR 2:179. State park deer hunts.

RELATES TO: KRS 148.029(5), 150.025(2), 150.105, 150.360, 150.390, 150.640(1), 150.710

STATUTORY AUTHORITY: KRS 148.029(5), 150.105, 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to remove, destroy, or disturb wildlife on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to authorize the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wildlife to open seasons and make those seasons apply to a limited area of the state. This administrative regulation is necessary to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of the parks.

Section 1. Hunting for either antlered or antlerless deer shall be allowed:

(1) On December 5 and 6, 1998, at:

(a) Grayson Lake State Park; and

(b) Taylorsville Lake State Park.

(2) On January 5 and 6, 1999, at:

(a) Barren River Lake State Resort Park;

(b) Dale Hollow State Resort Park;

(c) Greenbo Lake State Resort Park; and

(d) Lake Cumberland State Resort Park.

(3) On January 12 and 13, 1999, at Dale Hollow State Resort Park.

Section 2. A person shall not hunt on a state park unless he:

(1) Was selected by a random drawing pursuant to 301 KAR 2:181E; or

(2) Is a member of the successful applicant's hunting party.

Section 3. (1) A person shall:

(a) Check in:

1. [(a)] Between 4 p.m. and 10 p.m. on the day before the hunt;

or

2. [(b)] After 5 a.m. on the day of the hunt;

(b) Furnish at check-in: [(c) By furnishing:]

1. The authorization number as specified in 301 KAR 2:181, showing that he was a successful applicant for the hunt; and

2. A driver's license or other form of personal identification.

(2) A member of the successful applicant's party shall check in with the applicant.

(3) When checking in, a successful applicant or a member of his party shall show:

(a) A valid:

1. 1998 deer permit with an unfilled carcass tag; or

2. [(b) A valid] Quota hunt deer permit with an unused carcass tag; and

(b) [(c)] Unless exempt from licensing requirements by KRS 150.170, a valid Kentucky:

1. Resident hunting license;

2. Resident combination hunting and fishing license; or

3. Annual nonresident hunting license.

Section 4. [6:] A person participating in the hunt:

- (1) Shall:
 - (a) Wear hunter orange as required by 301 KAR 2:172(12);
 - (b) Check deer taken at the designated park check station;
 - (c) Check out before leaving the park; and
 - (d) Obey the provisions of 301 KAR 2:172(10) and (13).
- (2) Shall not:
 - (a) Use a firearm, archery equipment or crossbow prohibited by 301 KAR 2:172;
 - (b) Take more than one (1) deer;
 - (c) Take a white deer at Dale Hollow State Resort Park;
 - (d) Tag an antlered deer with an "antlerless only" tag;
 - (e) Injure a tree by using:
 - 1. A tree stand except a portable stand;
 - 2. Climbing devices which nail or screw to the tree; or
 - 3. Climbing spikes.
 - (g) Discharge a firearm within 100 feet of a maintained road;
 - (h) Hunt:
 - 1. In an area posted as closed by signs; or
 - 2. Outside the park boundaries.

Pursuant to KRS 13A.1120(3), the Department of Parks and the Department of Fish and Wildlife Resources have reviewed and approved this administrative regulation to implement the provisions of KRS 148.029(5) for the removal of deer from selected state parks where excessive deer numbers are damaging local ecosystems.

Kenny Rapier, Commissioner
Department of Parks

C. Thomas Bennett, Commissioner
Department of Fish and Wildlife Resources

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 15, 1998 at 11 a.m.

TRANSPORTATION CABINET (As Amended at ARRS, September 8, 1998)

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, [49 GFR 18;] 23 USC Section 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2), 23 USC Section 112(b)(2), [13A-100(1), 45A.800 through 45A.835;] 23 CFR 172(1) [; 49 CFR 18, 23 USC]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes [sets forth] the procedure to be used by the Transportation Cabinet when issuing public notice of the need for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Preparation of a Procurement Bulletin. (1) When the Transportation Cabinet has need of engineering or related services, it shall prepare a procurement bulletin announcing its intentions.

(2) A procurement bulletin prepared by the cabinet shall include a request for proposal for each project anticipated being contracted during a specified period of time which includes the following:

- (a) The general scope of the project as provided by the user division;
- (b) A discussion of procedures to follow for submission of a proposal on the project;
- (c) An anticipated project schedule as provided by the user division;
- (d) Any requirements for DBE utilization;
- (e) Deadline for filing a response [responses];

(f) The evaluation factors and their relative weights on which a response shall [the responses will] be evaluated by the Selection Committee;

(g) A timetable for the selection committee's meetings for the project;

(h) A list of all firms prequalified pursuant to 600 KAR 6:040 in each applicable category as of the date of the bulletin;

(i) A list of the firms prequalified pursuant to 600 KAR 6:040 and certified as a DBE as of the date of the bulletin;

(j) If established in advance [in certain circumstances deemed appropriate] by the State Highway Engineer, the maximum fee for consultant services for the project;

(k) If [When] appropriate, the item numbers from the "six (6) year plan"; and

(l) The items required by KRS 45A.825(2)(b).

(3) A copy of the procurement bulletin shall be made available [mailed] to each firm prequalified in a [any] category to perform engineering or related services for the cabinet.

(4) The procurement bulletin may [if deemed appropriate by the State Highway Engineer, the procurement bulletin may indicate the maximum fee for a particular proposed project or] require the initial solicitation of a complete work price and qualification proposal.

(5) A procurement bulletin for statewide engineering or related services may specify that more than one (1) firm be selected to provide the services requested in the bulletin.

(6)(a) The user division or office shall recommend the evaluation factors and relative weights to the Transportation Cabinet Secretary. Unless unique or particularly complex circumstances exist, the evaluation factors shall be selected from the list established in this paragraph [set forth below]. The Transportation Cabinet Secretary shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of a professional firm [firms] for engineering or related services.

1. Relative experience of professional personnel assigned to the project team:

a.] with highway projects or projects on another mode of transportation or intermodal transportation projects for:

a. The Kentucky Transportation Cabinet; or

b. [; and

b. With highway projects or projects on another mode of transportation or intermodal transportation projects [for] Federal, local or other state governmental agencies;

2. Capacity to comply with the project schedule;

3. Past record of performance on a project of similar type and complexity;

4. Project approach and proposed procedures to accomplish the services for the project;

5. Location where the work will be performed;

6. Special or unique expertise;

7. Special or unique equipment; and

8. Familiarity with geographic areas and resources.

(b) The weighting of each factor shall be published in the announcement for the specific project.

(7) In addition to publishing [Each time] a procurement bulletin [is published], the cabinet may [shall] place an advertisement of the cabinet's need for engineering or related services and availability of the procurement bulletin in [at least] two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

Section 2. Response to Procurement Bulletin. (1) A prequalified firm responding to a procurement bulletin for engineering or related services shall submit to the Division of Professional Services the following:

(a) The [specified] number of copies of a completed Response to Announcement for Engineering and [or] Related Services as Prime Consultant, form TC 40-15 specified in the procurement bulletin [revised July 1994, Form TC 40-15 is incorporated by reference in Section 3 of this administrative regulation]; and

(b) The letter required by KRS 45A.825(3).

(2) A prequalified firm responding to a procurement bulletin for construction-related engineering services shall submit to the Division of Professional Services, in addition to the items in subsection (1)

[(4)(a)] of this section, the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7 [revised June 1992; Form TC 40-7 is incorporated by reference in Section 3 of this administrative regulation].

(3) **As part of its response to a procurement bulletin**, a pre-qualified firm which proposes to employ a subconsultant [~~when responding to a procurement bulletin~~] shall submit to the Division of Professional Services, in addition to the other items required by this section, the Subconsultant Qualifications for Response to **Announcement [Advertisement]** for Engineering and Related Services, form TC 40-15-SUB [revised July 1994; Form TC 40-15-SUB is incorporated by reference in Section 3 of this administrative regulation].

(4) A firm or proposed subconsultant **that is not** [~~shall be~~] pre-qualified in the specified areas of prequalification prior to the response due date published in the announcement of the need for engineering or related services for a particular project [~~or~~] shall not be considered for selection.

(5)(a) The Director, Division of Professional Services, shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate Professional Engineering Services Selection Committee.

(b) **A response [Responses]** received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) **A response [Responses]** received with fewer copies of the response than required **by subsection (1)(a) of this section** shall be returned to the firm and shall not be listed for consideration to perform the project.

(d) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and the Division of Professional Services receives **notification** [~~a copy of the transmittal sheet~~] indicating that the LRC **Government [Personal Service]** Contract Review **Committee [Subcommittee]** has received the contract and project information for review as set forth in 600 KAR 6:070.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Response to Announcement for Engineering **and** [~~or~~] Related Services as Prime Consultant," Form TC 40-15, July 1994 edition;

(b) "Supplemental Information in Response to Announcement for Construction Services," Form TC 40-7, June 1992 edition; and

(c) "Subconsultant Qualifications for Response to **Announcement [Advertisement]** for Engineering and Related Services," Form TC 40-15-SUB, July 1994 edition.

(2) **This [The incorporated]** material may be inspection, copied or obtained at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622, **Monday through Friday**, [~~between the hours of~~] 8 a.m. and 4:30 p.m. [~~Monday through Friday~~].

J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel
APPROVED BY AGENCY: May 15, 1998
FILED WITH LRC: May 15, 1998 at noon

TRANSPORTATION CABINET
(As Amended at ARRS, September 8, 1998)

600 KAR 6:060. Professional Engineering Service Selection Committee.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172[~~, 49 GFR 18~~], 23 USC **Section 112(b)(2)**

STATUTORY AUTHORITY: KRS **45A.807(2)**, [~~13A.100(1); 45A.800 through 45A.835~~]; 23 CFR 172[~~1~~], [~~49 GFR 18~~]; 23 USC **112(b)(2)**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835.** This administrative regulation **establishes** [~~sets forth~~] the procedure to be used by the Transporta-

tion Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Establishing a Professional Engineering Services Selection Committee. (1) A Professional Engineering Services Selection Committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)(a) The Transportation Cabinet Secretary shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The Transportation Cabinet Secretary, or his designee, shall review all applications [~~and submit a list of ten (10) applications~~] from which the secretary shall select six (6) to serve in the pool for a period of one (1) year.

(c) **The six (6) appointees shall meet the requirements established in KRS 45A.810(5)(a).** [~~Only persons who are employees of the cabinet and registered professional engineers of the Commonwealth shall be appointed to the pool.~~]

(d) A person serving on the Professional Engineering Services Selection Committee from this pool shall not be eligible to [~~also~~] serve on the same selection committee as a representative of a user division as specified **by** KRS 45A.810(5)(b).

(3)(a) The director of the user division responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located.

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) employees who have familiarity and experience related to the services that are being contracted.

(c) The director may appoint himself to the committee.

(d) If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the Division of Professional Services, each co-user division shall appoint one (1) member to the selection committee.

(e) If the cabinet is procuring professional engineering or related services in conjunction with another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not [~~be required to~~] involuntarily serve as a member of a Professional Engineering Services Selection Committee.

(5) Each member of a Professional Engineering Services Selection Committee shall **complete, sign, and return to the committee the following forms:**

(a) Form TC 40-9, Certification of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee;

(b) Form TC 40-6, "Ex Parte" Disclosure;

(c) Form TC 40-4, Certification of Confidentiality; and

(d) Form TC 40-10, Certification of Conformity with Procurement Process. [~~execute the forms incorporated by reference in Section 3(1)(a) to (d) of this administrative regulation:~~

(a) ~~Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective May 1994;~~

(b) ~~"Ex Parte Disclosure Form," Form TC 40-6 as effective May 1994;~~

(c) ~~"Certificate of Confidentiality Form," Form TC 40-4 as effective May 1994; and~~

(d) ~~"Certificate of Conformity with Procurement Process," Form TC 40-10 as effective May 1994.]~~

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c), is an employee of a consulting firm, that consulting firm shall not be considered for **a project which is** [~~any projects which are~~] reviewed by that selection committee.

(b) If a firm submitted a response under **the** [~~this~~] circumstance **identified in paragraph (a) of this subsection**, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) After issuing ~~[written]~~ approval to advertise for a consultant to perform professional engineering or related services, the secretary of the cabinet, or his designee, shall establish a Professional Engineering Services Selection Committee for each project.

(8) The Division of Professional Services shall provide each Professional Engineering Services Selection Committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a Professional Engineering Services Selection Committee shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall ~~[scrupulously]~~ comply with ~~[both the letter and the spirit of]~~ the cabinet's Official Order Number 94902 regarding conflicts of interest ~~[which was issued on May 21, 1993. This Official Order is incorporated by reference in Section 3 of this administrative regulation].~~

~~[(c) Each Transportation Cabinet member of a Selection Committee shall be considered an officer as defined in KRS 11A.010(7); file an annual statement of financial disclosure pursuant to KRS 11A.050.]~~

Section 2. Operation of a Professional Engineering Services Selection Committee. (1)(a) The initial meeting of a Professional Engineering Services Selection Committee shall be called by the Division of Professional Services.

(b) **The quorum for the initial meeting shall be:**

1. Three (3) of the five (5) voting members, if there will be a subsequent meeting; or

2. Four (4) of the five (5) voting members, if there will not be a subsequent meeting. ~~[A quorum for the initial meeting shall be three (3) of the five (5) voting members unless only one (1) meeting is anticipated, when a quorum shall be four (4) of the five (5) voting members.]~~

(2) **Subsequent meetings.**

(a) A subsequent meeting ~~[(a) Meetings]~~ of a Professional Engineering Services Selection Committee:

1. May be called:

~~[(a)]~~ by the chairperson at a mutually convenient time; or

2. Shall be called ~~[(b)]~~ ~~[during normal working hours with at least one (1) week's notice.~~

~~[(b)]~~ Special meetings may also be called upon a consensus of four (4) of the five (5) voting members of the selection committee.

~~[(c)]~~ A motion or decision of the selection committee shall require a simple majority affirmative vote of all members present for passage.

(c) Except as provided in subsection (1)(b)1 of this section, ~~[(d)]~~ a quorum ~~[for all but the initial meeting]~~ shall be constituted by four (4) of the five (5) voting members present.

~~[(d)]~~ Voting by proxy shall not be allowed.

(3)(a) The Professional Engineering Services Selection Committee shall give fair and impartial consideration to **each response** ~~[all responses]~~ certified in accordance with KRS 45A.825(5) ~~[(6)]~~.

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen **each** ~~[all]~~ certified firm **response** ~~[responses]~~.

(c) Prior to the ~~[second meeting of the]~~ selection committee ~~de-~~**termining** ~~[to determine and rank]~~ the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin. ~~[These evaluations and ratings are preliminary and therefore confidential working documents.]~~

(4) In an executive session **pursuant to the requirements established in subsections (5) through (13) of this section** ~~[at its second meeting]~~, the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)(a) Each committee member shall list **the three (3) firms he ranked highest** ~~[all firms in his top three (3) rankings.]~~

(b) **Each firm included in a list prepared by a committee member** ~~[All firms included on any of these lists]~~ shall be placed on the short list of firms.

(6)(a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications, the quality

of their proposals, and the evaluation factors.

(b) Each committee member shall be given the opportunity to provide insight into **the reasons for selecting or not selecting each firm** ~~[why each firm should or should not be selected]~~ for the project.

(c) **A firm shall** ~~[Any firm may]~~ be eliminated from further consideration by consensus of the selection committee members.

(7)(a) Each firm remaining under consideration after the discussion period **established** ~~[set forth]~~ in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.

(b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.

(c) **A firm shall** ~~[Any firm may]~~ be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process **established** ~~[set forth]~~ in subsection ~~(7) [(8)]~~ ~~[(7)]~~ of this section, more than three (3) firms remain under consideration, the process **established** ~~[set forth]~~ in subsection ~~(7) [(8)]~~ ~~[(7)]~~ of this section shall be repeated until ~~[only]~~ three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection ~~(8) [(9)]~~ ~~[(8)]~~ of this section shall be individually ranked by the committee members using secret ballots.

(10)(a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.

(b) If there is a tie ranking and if one of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.

(c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions **established** ~~[set forth]~~ in subsection (7) of this section until the tie is broken.

(11) If the selection committee elects, it may interview **a responding firm** ~~[any of the responding firms]~~ to aid in its determination of the best qualified firm.

(12) For a selection committee **review** ~~[reviews]~~ involving statewide services advertised in accordance with Section 1 ~~(5) [(4)]~~ of 600 KAR 6:050, the committee shall rank:

(a) The top three (3) firms; or

(b) If more than three (3) firms are specified in the procurement bulletin, the number of firms specified in the bulletin, [the number of top-ranked firms as specified in the procurement bulletin and may select a second and third ranked firm, but a minimum of three (3) firms shall be ranked.]

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)(a) The **Chairperson** ~~[Chairman]~~ of the Professional Engineering Services Selection Committee shall notify the Director of the Division of Professional Services of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Professional Services shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Professional Services shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **"Certification** ~~[Certificate]~~ of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee," Form TC 40-9, **effective** May 1994 [edition];

(b) "Ex Parte" Disclosure, Form ~~["Form"]~~ TC 40-6, **effective September 1998** [May-1994 edition];

(c) **"Certification of Confidentiality,"** ~~["Certificate of Confidentiality-Form,"]~~ Form TC 40-4, **effective September 1998** [May-1994 edition];

(d) **"Certification** ~~[Certificate]~~ of Conformity with Procurement Process", Form TC 40-10, **effective** May 1994 [edition]; and

(e) The Transportation Cabinet's Official Order Number 94902 regarding Conflict of Interest, May 21, 1993 edition.

(2) **This** ~~[The]~~ material ~~[incorporated by reference]~~ may be inspection, copied, or obtained at the Division of Professional Services,

6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622, **Monday through Friday**, [between the hours of] 8 a.m. and 4:30 p.m. [, Monday through Friday.]

J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary
TODD SHIPP, Office of General Counsel
APPROVED BY AGENCY: May 15, 1998
FILED WITH LRC: May 15, 1998 at noon

TRANSPORTATION CABINET
(As Amended at ARRS, September 8, 1998)

600 KAR 6:080. Financial records and audits of firms.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 26 CFR 1.167, 48 CFR 30, 31, Chapter 99, Subchapter B, [49 CFR 18; 23 USC Section 112(b)(2)]

STATUTORY AUTHORITY: KRS 45A.807(2), 23 CFR 127(1) [13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or related services pursuant to KRS 45A.800 to 45A.835. The U.S. Department of Transportation requires all engineering or related projects which it funds to be subject to the cost principles or accounting standards established in 48 CFR 30 and 31. This administrative regulation establishes the audit methodology to be used by a cabinet auditor for an engineering or related service agreement entered into by the cabinet pursuant to KRS 45A.800 to 45A.835; establishes the requirements for keeping financial records; and requires all firms contracting with or prequalified by the cabinet to comply with the federal regulations. [This administrative regulation sets forth audit methodology [the procedure] to be used by the Transportation Cabinet auditors for [when auditing professional] engineering or related service agreements entered into by the Transportation Cabinet pursuant to [services providers while implementing] the provisions of KRS 45A.800 to 45A.835. This administrative regulation [it further] sets the criteria for [standards] firms [are] to follow in the keeping of their financial records. All engineering and related projects which are funded with U.S. Department of Transportation funds are subject to the cost principles or [required to use the audit and] accounting standards set forth in 48 CFR 30 and 31. For consistency, these federal regulations [Because an engineering or related services firm may have both a federally funded and state-only funded project, these federal regulations] are imposed on all firms contracting with or prequalified by the Transportation Cabinet.]

Section 1. Financial Records of Firms. (1) A firm which has requested prequalification, [or which] has been prequalified, is under contract, or has been selected to provide professional engineering or related services to the Transportation Cabinet, shall maintain and allow the cabinet access to:

(a) All financial or other information necessary to determine or verify the firm's direct wage rates, indirect cost rates, overhead, and direct project charges [which are not included in overhead rates];

(b) All other information necessary to verify the firm's application for prequalification or renewal of prequalification; and

(c) Payroll.

(2)(a) A firm shall maintain all financial records including [

(2)(a) A prequalified firm shall maintain all financial records including payroll time records for all employees, including the firm's principals, in accordance with 48 CFR Part 31 [in accordance with 48 CFR Part 31].

(b) The financial records of a firm shall be retained and made available to the Transportation Cabinet until after the next audit performed by the Transportation Cabinet or for five (5) years, whichever occurs first.

[(2) [(b)] A specific incurred cost or expense shall [not] be considered either [both] a direct cost or an [and] indirect cost.]

(3) If [When] a firm is notified by the Transportation Cabinet of a pending [on-site] audit, the auditor may request that some portions of the needed information be mailed to him in advance of the audit date. For the audit, the firm shall provide [collect] the following information to the auditor when he arrives; [to be given to the auditor when he arrives on-site. The auditor may request that a portion of the information which can be readily and easily reproduced be mailed to him prior to arriving on-site.]

(a) Chart of accounts;

(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;

(c) Income tax returns for the audit year;

(d) Statement of company policies to include [but not be limited to] personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, [or] retirement plans, and other administrative policies;

(e) For the audit period, a breakdown of the total project fees from all contracts by indirect and direct cost, including a detailed listing of the direct costs; [Copy of a current proposal for a project, if available;]

(f) General ledger;

(g) Cash disbursements and accounts payable journals;

(h) [Copies of] All leases, including a lease [to include but not be limited to leases] on office space, buildings, machinery, copiers, equipment, and motor vehicles;

(i) Schedule of current personnel by classification;

(j) Most current payroll register;

(k) All [Quarterly] federal, state, and local payroll tax forms;

(l) Billing statements;

(m) List of bonuses to individual employees and the date paid;

(n) [Copy of] The pension or retirement plan of the firm and the contributions made on behalf of each employee;

(o) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;

(p) All contracts which were active during the audit year; and

(q) Minutes from the directors or stockholders meetings.

(4)(a) Except for the items set forth in subsection (3)(c) and (q) of this section, the firm shall allow the auditor [shall be allowed to] make a copy [firm shall provide the auditor with copies] of the items set forth in subsection (3) of this section.

(b) The auditor may review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm.

(5) A direct cost shall be determined by the provisions of 48 CFR 31.202 and not by whether it is reimbursable.

Section 2. Limitations on [Overhead;] Direct Costs; and Indirect Costs. (1) The maximum annual compensation [direct salary] for a principal or partner of a firm shall be \$100,000 per year.

(2) The maximum annual compensation for a nonprincipal or nonpartner of a firm shall be \$90,000 per year. [In the calculation of indirect costs for overhead, the maximum salary for administrative purposes shall be:

(a) \$100,000 a year for a principal or partner of a firm; or

(b) \$90,000 a year for a nonprincipal or nonpartner of a firm.

(3) The maximum direct salary shall be:

(a) \$100,000 per year for a principal or partner of a firm; or

(b) \$90,000 per year for a nonprincipal or nonpartner of a firm;

(4)(a) The lobbying portion of dues paid to organizations shall not be allowed in the computation of indirect costs.

(b) If an organization has not separated the lobbying portion of its dues in the billing statement, the organization shall be contacted by the auditor for the information.

(c) If the amount of the dues attributable to lobbying is not made available to the auditor, the total amount of dues paid to the organization shall not be allowed in computation of indirect costs.]

(3) [(5)] To compute the average hourly pay rate for a [any] salaried job classification at a firm, the number of available annual working hours per year shall be 2080.

(4) [(6)] As a reasonableness test for indirect labor charges, Indirect labor charges, including [but not limited to] bonuses, [and] tempo-

rary help, and other identifiable labor charges shall not exceed sixty-seven (67) percent of the direct labor base of the firm.

Section 3. Approved Audits. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(2)(a) If the firm has an audit which covers the time period that the Transportation Cabinet's audit will cover and which was [a current audit of sufficient detail] prepared by the [a] Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency [and desires the Transportation Cabinet to utilize that audit for establishment of its overhead rate], the firm shall provide [in a timely manner] the audit report to the Transportation Cabinet prior to the scheduled audit.

(b) The [External Audit Branch of the] Transportation Cabinet shall review an [any] audit submitted [to the Transportation Cabinet] pursuant to the provisions of paragraph (a) of this subsection. If necessary for an adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.

(c) The [External Audit Branch of the] Transportation Cabinet shall [may] approve the audit for use, disapprove the audit for use, or approve the audit for use based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.

(d) The negotiation unit shall use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee:

1. Subject to:

a. The review performed pursuant to paragraph (b) of this subsection; and

b. An adjustment made based on a limitation imposed by the cabinet pursuant to 600 KAR 6:070; and

2. With the understanding that a contract modification shall be processed if:

a. An audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses; and

b. An overhead submission packet is received in a timely manner to allow the cabinet sufficient time to perform or verify the overhead audit. [1. Subject to the review performed in paragraph (b) of this subsection and any adjustments made based on limitations imposed by the Kentucky Transportation Cabinet pursuant to 600 KAR 6:070, the negotiation unit may use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee.

2. This shall only be done with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses and if an overhead submission packet is received in a timely manner allowing the Transportation Cabinet [Division of Professional Services' External Audit Branch] sufficient time to perform or verify the overhead audit.]

(3) Quarterly, the Transportation Cabinet [Division of Professional Services] shall select for audit [review] [select] a minimum of thirty (30) percent of the number of [one (1) and a maximum of three (3)] lump sum contracts that have been completed during the previous three (3) months [and shall request an audit from the External Audit Branch].

Section 4. Audit Standards. (1) The following accounting and auditing standards shall be abided by in an audit conducted by the cabinet:

(a) "Government Auditing Standards, 1994 Revision";

(b) "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)";

(c) "Original Pronouncements, Accounting Standards as of June 1, 1997, Volume I and Volume II";

(d) 48 CFR Part 31, Contract Cost Principles and Procedures;

(e) 48 CFR Part 30, Cost Accounting Standards Administration, as it relates to 48 CFR Part 31;

(f) 48 CFR Chapter 99, Subchapter B, Procurement Practices and Cost Accounting Standards; and

(g) 26 CFR Part 1.167, Depreciation, if a firm does not have an acceptable depreciation schedule in effect. [The Transportation Cabinet, when auditing a firm, shall abide by the accounting and auditing standards contained in the following:

(a) The material [adopted without change or] incorporated by reference in Section 6(1) [and (2)] of this administrative regulation; and

(b) The federal regulations adopted in Section 6(2)(a), (b), (c), and (d) of this administrative regulation.]

(2) The term "common control" or "related parties" as used in Number 57 of the "Original Pronouncements, Accounting Standards as of June 1, 1997 [1995], Volume I and Volume II" shall be determined to exist if, in [when] the relationship between a consultant firm and another company which is involved in real property renting, leasing arrangements, or joint ventures [is such that]:

(a) A principal or person with management responsibilities or significant influence in the consultant firm:

1. Owns twenty (20) percent or more of the other company; [or]

2. [(b) A principal or person with management responsibilities or significant influence in the consultant firm] Is also a principal or person with management responsibilities or significant influence in the other company; [or]

3. [(c) A principal or person with management responsibilities or significant influence in the consultant firm] Has a family member whom he might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; or

4. [(d) A principal or person with management responsibilities or significant influence in the consultant firm] Has a family member who might control or influence him because of the family relationship and who is a principal in or has management responsibilities or significant influence in the other company; or

(b) [(e)] The interrelationship that exists between business entities makes it appear that the same persons control or have significant influence in those businesses.

[(2) The term "common control" as it is used in 48 CFR Part 31 shall be determined to exist when the companies or the principals of the company involved in real property renting, leasing arrangements, or joint ventures share common ownership of twenty (20) percent or more.]

Section 5. Audit Findings. (1) (3)(a) Prior to the issuance of a final audit report, the auditor from the Transportation Cabinet shall present preliminary [the draft audit] findings to the firm [either in an exit conference or in written correspondence to the firm].

(b) If the auditor's preliminary findings include an adjustment to the overhead rate submitted by the firm, the auditor's work papers shall be included with the preliminary findings. [If the auditor provides the draft audit findings in writing, he shall notify the firm that within one (1) week of the mailing of the draft audit findings, the firm may request a copy of the auditor's work papers for review.]

(c) A comment [Any comments] from the firm shall be submitted [submits] in writing within fifteen (15) calendar days of the firm's receipt [mailing] of the preliminary findings.

(d) The firm's comments [work papers] shall be taken into consideration in the issuance of the final [audit] report.

[(c) If the auditor and the firm hold an exit conference, the auditor shall allow the firm to review or copy the work papers. The firm may submit any additional comments in writing within fifteen (15) days of the exit conference. These additional comments shall be taken into consideration in the issuance of the final audit report.]

(2)(a) A firm has thirty (30) calendar days from the date the final report is received by the firm to request a review of the final report. [Section 5. Appeal of Audit Findings. (1)] [If a firm disagrees with the [final] results of a final report issued [an audit performed or approved] by the Transportation Cabinet, the firm may request a review [of the audit] within thirty (30) calendar days of the date the final [audit] report is received by [transmitted to] the firm.]

(b) The request for a review shall be in writing and clearly state all of the concerns with the final report [audit] and the reasons for the concern.

(c) If the concerns and the reasons for the concerns are not

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clearly stated, the request for review shall be returned.

(d)1. The firm may submit a supplement to the request for review.

2. The supplement shall [may] be submitted in writing within the thirty (30) calendar days established [set forth] in paragraph (a) of this subsection.

(3) The Audit Review Committee [Subcommittee] shall evaluate the request for review and the final report.

(4) [(2)] The Audit Review Committee shall consist of the following:

(a) Commissioner of the Department of Fiscal Management, Chair;

(b) Deputy State Highway Engineer for Project Development; and

(c) General counsel.

(5) [(3)] A committee member may appoint a proxy to serve on this committee.

(6) [(4)] The Audit Review Committee shall discuss the findings of the audit and the request for review. If desired, the Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(7)(a) The firm has thirty (30) calendar days from receipt by the firm of the committee's decision to appeal the decision to the Secretary of the Transportation Cabinet. [(5)] [If the firm is not satisfied with the decision of the Audit Review Committee, the firm [he] may [further] appeal to the Secretary of the Transportation Cabinet within thirty (30) calendar days of receipt by the firm [transmittal] of the committee's decision [to the firm].]

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 6. Adoption Without Change. (1) The following federal regulations are adopted without change:

(a) 48 CFR Part 31, "Contract Cost Principles and Procedures", as effective October 1, 1997;

(b) 48 CFR Part 30, "Cost Accounting Standards Administration", as effective October 1, 1997;

(c) 48 CFR Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards", as effective October 1, 1997; and

(d) 26 CFR Part 1.167, "Depreciation", as effective July 18, 1995.

(2) This material may be inspected, copied, or obtained at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", copyright 1998 [1997] [1995] by the American Institute of Certified Public Accountants, Inc.; and

(c) "Original Pronouncements, Accounting Standards as of June 1, 1997 [1995], Volume I and Volume II" published by the Financial Accounting Standards Board.

(2) This material may be:

(a) Inspected at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Obtained by contacting:

1. For a copy of "Government Auditing Standards, 1994 Revision", the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328;

2. For a copy of "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", the American Institute of Certified Public Accountants, Inc., Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; or

3. For a copy of "Original Pronouncements, Accounting Standards as of June 1, 1998, Volume I and Volume II", the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box

5116, Norwalk, Connecticut 06856-5116. [The following federal regulations are adopted without change:

(a) 48 CFR Part 31, "Contract Cost Principles and Procedures," as effective October 1, 1997 [1995];

(b) 48 CFR Part 30, "Cost Accounting Standards Administration," as effective October 1, 1997 [1995], but only as it relates to 48 CFR Part 31;

(c) 48 CFR Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards," as effective October 1, 1997 [March 30, 1995]; and

(d) 26 CFR Part 1.167, "Depreciation," as effective July 18, 1995, but only when the firm does not have an acceptable depreciation schedule in effect; and

(3) All material incorporated by reference as a part of this administrative regulation may be [obtained,] viewed[, or copied] at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555 [7008]. The office hours are 8 a.m. to 4:30 p.m. eastern time on week-days.

(4) The material adopted as a part of this administrative regulation may be obtained, viewed, or copied at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

(5) The material incorporated by reference may be obtained as follows:

(a) For a copy of "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop:SSOP, Washington, D.C. 20402-9328;

(b) For a copy of "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", copyright 1997 by the American Institute of Certified Public Accountants, Inc. contact The American Institute of Certified Public Accountants, Inc., Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; and

(c) For a copy of "Original Pronouncements, Accounting Standards as of June 1, 1997, Volume I and Volume II" published by the Financial Accounting Standards Board contact the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116.]

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 10, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, September 8, 1998)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028(1)(a), (k), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), (k), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3) requires that a new teacher, including an out-of-state teacher with less than two (2) years experience, successfully complete appropriate assessments prior to initial certification in Kentucky. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the tests, determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully

complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

Section 2. ~~The following NTE Core Battery Tests and passing scores shall be required of each new teacher applicant and an out-of-state applicant with less than two (2) years of teaching experience as defined in 704 KAR 20:045:~~

- ~~(1) Communication skills - 646;~~
- ~~(2) General knowledge - 643;~~
- ~~(3) Professional knowledge - 644.~~

Section 3. Specialty tests and passing scores shall be required of each new teacher applicant and a teacher seeking an additional certificate as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take ~~the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take~~ Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510 through the effective date of this administrative regulation [September 30, 1998]. After that [this] date, an applicant [applicants] shall take two (2) middle school specialty tests [with no passing scores] based on the applicant's specialty with no passing scores as identified in this subsection:

- (a) Middle School Mathematics (0069) - no passing score;
- (b) Middle School Science (0439) - no passing score;
- (c) Middle School English (0049) - no passing score;
- (d) Middle School Social Studies (0089) - no passing score.

(4) An applicant for certification for teacher of exceptional children in communication disorders, learning behavior disorders, or [and] moderate and severe disabilities ~~(except for communication disorders)~~ shall take the Special Education Test (10350) with a passing score of 500 through September 30, 1997. After this date, an applicant for certification for teacher of exceptional children shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

- (a) Communication disorders:
 1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and
 2. Speech Language Pathology (10330) - 450;
- (b) Learning behavior disorder:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and
 2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147; or
- (c) Moderate and severe disabilities:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and
 2. Teaching Students with Mental Retardation (20321) - 139;
- ~~(d) Hearing impaired: Special Education Test (10350) - 500;~~
- ~~(e) Visually impaired: Special Education Test (10350) - 500.~~

(5) An applicant for certification for teacher of exceptional children with hearing disorders and visual disorders shall take Special Education test (10350) with a passing score of 500 through the effective date of this administrative regulation [September 30, 1998]. After that [this] date, an applicant shall take specialty tests based on the applicant's specialty with a corresponding passing score as identified in this subsection:

- (a) Hearing impaired:
 1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and
 2. Education of Deaf and Hard of Hearing Students (0271) - 156;
- (b) Visually impaired:
 1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and

2. Teaching Students with Visual Impairments (0280) - no passing score.

(6) An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.

- (a) Biology:
 1. Biology: Content Knowledge Part 1 (20231) - 139; and
 2. Biology: Content Essays (30233) - 139 [no passing score];
 - (b) Chemistry:
 1. General Science: Content Knowledge Part 2 (10432) - 150; and
 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (c) Dramatics:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
 - (d) Dramatics-speech:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
 - (e) English:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
 - (f) History:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
 - (g) History - political science:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
 - (h) Mathematics:
 1. Mathematics: Content Knowledge (10061) - 141; and
 2. Mathematics: Proofs, Models, and Problems (20063) - 141 [no passing score];
 - (i) Mathematics - physical science: select from either:
 1. Mathematics Test (10060) 500; or
 2. Chemistry, Physics, and General Science Test (10070) - 510;
 - (j) Physics:
 1. General Science: Content Knowledge, Part 2 (10432) - 150; and
 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (k) Physical science:
 1. General Science: Content Knowledge Part 2 (10432) - 150; and
 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (l) Political science:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
 - (m) Science: select from either:
 1. Biology and General Science Test (10030) - 550; or
 2. Chemistry, Physics and General Science Test (10070) - 510;
 - (n) Speech:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - no passing score.
- ~~[(6) Effective October 1, 1997, a test designated with no passing score in subsection (5) of this section shall have the following passing scores:~~
- ~~(a) English Language, Literature, and Composition: Essays~~

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(20042) with a passing score of 135;

(b) Biology: Content Essays (30233) with a passing score of 139;

(c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;

(d) Social Studies: Interpretation of Materials (20083) with a passing score of 150;

(7) An applicant for certification in all grades shall take the specialty test or tests with the passing score as identified in this subsection:

(a) Art – Art Education Test (10130) – 510;

(b) French – French (10170) – 510;

(c) German – German (20180) – 490;

(d) Health – Educational Professional Standards Board Test for Health Education – 67;

(e) Music (Vocal and Instrumental) – Music Education (10110) – 510;

(f) Physical education:

1. Physical Education: Content Knowledge (10091) – 152; and

2. Physical Education: Movement Forms Analysis and Design (30092) – no passing score;

(g) Spanish:

1. Spanish Content Knowledge (10191) – 145; and

2. Spanish: Productive Language Skills (20192) – no passing score;

(h) School Media Librarian: Library Media Specialist (10310) – 590;

(7) [(8) Effective October 1, 1997:] **Except as provided in subsection (8) of this section**, an applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing score as identified in this subsection.

(a) Art:

1. Content Knowledge (10133) – 139; and

2. Art Making (20131) – no passing score;

(b) French:

1. French: Content Knowledge (10173) – 144; and

2. French: Productive Language Skills (20171) – no passing score;

(c) German: German: Content Knowledge (20181) – 143;

(d) Health: Health Education (10550) – 550;

(e) Latin: Latin (0600) – 530;

(f) Music:

1. Music: Content Knowledge (10113) – 137; and

2. Music: Concepts and Processes (30111) – no passing score;

(g) Physical education:

1. Physical education: Content Knowledge (10091) – 152; and

2. Physical education: Movement Forms Analysis and Design (30092) – 135;

(h) Spanish:

1. Spanish Content Knowledge (10191) – 145; and

2. Spanish: Productive Language Skills (20192) – 156;

(i) School media librarian: Library Media Specialists (10310) – 590.

(8) **After the effective date of this administrative regulation, [Effective October 1, 1998] tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:**

(a) Art Making (20131) – 154;

(b) French: Productive Language Skills (20171) – 151;

(c) Music: Concepts and Processes (30111) – 140.

(9) [Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:

(a) Physical Education: Movement Forms – Analysis and Design (30092) – 135;

(b) Spanish: Productive Language Skills (20192) – 156.

(10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:

(a) Agriculture: Agriculture (10700) – 530;

(b) Business and Marketing Education – Business Education (10100) – 570 [540];

(c) Comprehensive Business – Business Education (10100) – 570 [540];

(d) Distributive Education – Business Education – 570 [540];

(e) Family and Consumer Sciences – Home Economics Education

(10120) – 540;

(f) Industrial Education – Technology Education (10050) – 570 [550].

(10) An applicant who holds one (1) of the certificates listed in this section shall may qualify for additional certification in English as a second language by completing Teaching English as a Second Language (0360) – 550.

(11) Specialty tests for an applicant who successfully completes a new test identified in subsections (3)(a) through (d), (5)(a) and (b), (7), and (10) of this section prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to this date and apply for certification no later than September 30, 1999. [Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty test with passing score as identified in this subsection:

(a) Business and Marketing Education – Business Education (10100) – 570;

(b) Comprehensive Business – Business Education (10100) – 570;

(c) Distributive Education – Business Education (10100) – 570;

(d) Industrial Education – Technology Education (10050) – 570.

(12)(a) If an applicant successfully completes a test identified in subsections (2), (4), (6), (8), (9), or (11) of this section prior to October 1, 1997, the specialty test shall be accepted for the issuance of the corresponding certification.

(b) A specialty test required prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification for a teacher applicant who:

1. Has successfully completed the test prior to that date; and

2. Applies for certification by September 30, 1998.]

Section 3. [4:] (1) An applicant for initial certification may take the [NTE Core Battery Tests and] Praxi II: Subject Assessments and Specialty Area Tests on a date established by the Educational Testing Service for national administration or on a date established by the Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 4. [5:] An applicant shall pay the appropriate examination fee for each relevant test required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. The fee for a specialty test developed by the Department of Education shall be equivalent to the current fee for the test administered by the Educational Testing Service.

Section 5. [6:] An applicant who fail to achieve at least the minimum score on [one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on] the specialty examination appropriate to the teaching field may retake the test or tests during one (1) of the scheduled test administrations.

Section 6. [7:] The Education Professional Standards Board shall collect data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 22, 1998
FILED WITH LRC: July 8, 1998 at 3 p.m.

**WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(As Amended at ARRS, September 8, 1998)**

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 CFR 361.36(b), (c), 29 USC 706(B)(A), (15)(A) [361.31(b), (c), 61 Fed. Reg. 24402 (1996), 29 USC 706(B)(A), (15)(A)]

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 34 CFR 361.36(b) [361.31(b), 61 Fed. Reg. 24402 (1996)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. 34 CFR 361.36(b) [361.31(b), 61 Fed. Reg. 24402 (1996);] requires the department to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 CFR 361.36(c) [361.31(c), 61 Fed. Reg. 24402 (1996);] established federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation. ["Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services.]

(2) ["Agency" or] "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services.

(4) "Individual with a most severe disability" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(5) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service.

[(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with a most severe disability" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (i.e., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.]

Section 2. Economic Need. (1) Economic need shall be consid-

ered in determining whether to grant vocational rehabilitation services.

(2) The commissioner shall [may] exempt services from the economic needs test if the department is able to provide services to all eligible individuals with severe disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2.

(3) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance and referral services; and

(c) Placement.

(4) ~~[A client who does not meet total financial need criteria shall apply 100 percent of the monthly excess household income to the rehabilitation program.]~~

(5)(a) Except as provided in subsection (2) of this section and paragraph (b) of this subsection, a residential student [residential students] at the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) who receives [receive] an individual government maintenance subsidy or has [who have] monthly excess household income shall contribute monthly the [an amount not to exceed the presumed] monthly value of in-kind support and maintenance for a recipient [recipients] residing in a nonmedical institution [nonmedical institutions] as defined by the Social Security Administration in 20 CFR 416.201.

(b) The Director of the Carl D. Perkins Comprehensive Rehabilitation Center or a designee shall [may] make a hardship exception to the maintenance contribution if agreed upon with the referring counselor.

(5) [(6) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for] The department's [agency] economic needs test shall be based on the 1998 Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce [in figuring the excess monthly household income]. If the individual has a monthly income that exceeds 100 percent of the 1998 median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal.

Section 3. Order of Selection. If the commissioner determines that the department [agency] shall be unable to provide services to all eligible applicants, the department [agency] shall implement the order of selection.

(1) An eligible individual [client] previously declared eligible for and receiving vocational rehabilitation services under an individualized written rehabilitation program shall not be affected if the department [agency] implements an order of selection.

(2) The order of selection shall not regulate the provision of information or [and] referral services.

(3) On implementation of the order of selection, the department [agency] shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6) An eligible individual [client] entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual shall [may] be served. If the priority category is closed, the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection policy shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the department is unable to provide services to all eligible individuals with severe disabilities, the department shall serve eligible individuals with a most severe disability first and then serve eligible individuals with a severe disability on a first-applied, first-served basis, as established by the date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

- (a) Priority I - eligible individuals with a most severe disability.
- (b) Priority Category II - eligible individuals with a severe disability who have serious limitations in three (3) functional capacities.
- (c) Priority Category III - eligible individuals with a severe disability who have serious limitations in two (2) functional capacities.
- (d) Priority Category IV - eligible individuals with a severe disability who have serious limitations in one (1) functional capacity.
- (e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.
- (f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 15, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(As Amended at ARRS, September 8, 1998)

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center.

RELATES TO: KRS 151B.190, 34 CFR 361.42, [34 CFR 361.31(b);] 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195[, 34 CFR 361.31(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate [prescribe rules and] administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharge [discharges] from the Carl D. Perkins Comprehensive Rehabilitation Center.

Section 1. Definitions. (1) ["Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Director" means Division Director of the Carl D. Perkins Comprehensive Rehabilitation Center.

(4) "Discharge" means an individual shall:

(a) Not have a further service provided;

(b) Be transported to the home area; and

(c) Not have a per diem charged against the case by the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC). [that no further services shall be provided to an individual [applicant or client]. The individual [applicant or client] shall be transported to the home area and the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall no longer charge per diem against the case.]

(5) "Eligible individual" means an individual who has been determined by an appropriate department staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.42.

(6) ["Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children, including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, an individual may be requested to present a medical statement. Regardless of whether an individual believes an absence(s) to be excused or unexcused, the individual shall notify the counselor and/or teacher or an appropriate

administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.

(7) [(5)] "Expulsion" means that the individual [applicant or client] has been dismissed from CDPCRC pursuant to Section 5 of this administrative regulation.

(8) "Suspension" means that an applicant or eligible individual shall:

(a) Not receive a CDPCRC service for the period of suspension;

(b) Be transported to the home area;

(c) Remain enrolled in the program for the period of the suspension with a per diem charged against the case; and

(d) Resume receiving the service after the period of suspension.

[(7)] "Suspension" means that the applicant or eligible individual [client] shall not receive CDPCRC services for a period of time not to exceed twenty (20) class days, and that the applicant or eligible individual [client] shall be transported to the home area, but the applicant or eligible individual [client] shall remain enrolled in the program. A per diem shall be charged against the case, and services may resume as soon as the suspension ends.]

[(7)] "Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, a student may be requested to present a medical statement. Regardless of whether a student believes an absence(s) to be excused or unexcused, the student shall notify the counselor and/or teacher or an appropriate administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.]

[(8)] "Unexcused absence" means any absence that does not meet the definition of excused absence as described.

(9) "Unexcused tardy" means that an individual [applicant or client] is late for class and does not have a note describing the reason from counseling, medical or other professional staff.]

Section 2. Admissions Policy. (1) An individual [Individuals] admitted to CDPCRC shall [meet one (1) of the following conditions]:

(a) Be [The individual is] an applicant of the Department of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision;

(b) Be [The individual is] an eligible individual [a client] of the Department of Vocational Rehabilitation who requires services of the type provided by CDPCRC, in order to benefit in terms of an employment outcome; or

(c) Have [The individual has] made arrangements [is an applicant or client of other agencies which have agreed] to reimburse CDPCRC for the cost of services provided.

(2) A prospect [All prospects] for admission shall provide [submit an application for CDPCRC services, including] the following:

(a) A consent for CDPCRC to provide emergency medical care signed by:

1. The individual; or

2. If the individual is a minor or a person who has been adjudged legally disabled, the individual's parent or guardian, as appropriate, subject to the limitations of KRS 387.660(3); [-In the case of minors, and persons who have been adjudged legally disabled, the individual's [applicant's or client's] parent or guardian, as appropriate, shall give the permission, subject to the limitations of KRS 387.660(3).]

(b) An agreement assuming responsibility for living arrangements upon the individual's discharge from CDPCRC by:

1. The individual; or

2. If the individual is a minor or a person who has been adjudged legally disabled, the individual's parent or guardian; and [An agreement by the individual [applicant or client] or others to assume responsibility for living arrangements, in the event that the individual [applicant or client] is later discharged from CDPCRC. In the case of minors and individuals [persons] who have been adjudged legally disabled, the parent or guardian, as appropriate, shall agree to

assume responsibility for living arrangements.]

(c) A description of **each limitation** [any limitations] that the individual [applicant or client] **has** [may have] in performing **an activity** [activities] of daily living.

(3) **An [No] individual** [applicant] or client shall **not** be admitted to **a [any]** CDPCRC program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether [such] a condition exists shall be made by a written opinion from a CDPCRC professional **with expertise concerning the identified condition** [skilled in the area in question], based upon documentation submitted at referral, and [any] other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the **individual's** [applicant's or client's] medical or behavioral condition represents a direct threat to self or others, the CDPCRC admissions counselor shall select a CDPCRC professional with expertise **concerning** [in] the **identified condition** [area that is likely to be a problem], and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPCRC professional, the decision of **the** [such] professional shall determine whether the **individual** [applicant or client] shall be admitted to CDPCRC **during that referral**. [No such decision shall stand for more than a single referral and] If the **individual** [applicant or client] is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall, at the time that the **individual** [applicant or client] is accepted for CDPCRC services for evaluation or treatment and training, establish a list of recommended services for the **individual** [applicant or client] and make a referral to the appropriate service area.

(7) When a decision is made to accept an **individual** [applicant or client] for admission, the **individual** [applicant or client] shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, **as appropriate**.

(8) When a decision is made not to admit **an** [the] applicant or **eligible individual** [client] to CDPCRC the referral source shall be notified in writing of the decision giving justification for that decision. The applicant or **eligible individual** [client] shall be notified of the decision and informed of the availability of the Client Assistance Program and the right to **a** [an administrative review or fair] hearing.

(9) **If an appeal is desired, an applicant or eligible individual who is** [Applicants or eligible individuals [clients] who are] dissatisfied with **an** admissions **decision shall** [decisions may] **appeal** [request an administrative review of] the decision pursuant to 706 KAR 1:100.

Section 3. Retention Policy. The decision to provide further services after an **individual** [applicant or client] has completed a CDPCRC program shall be based upon the following:

(1) **(a) A further program shall be requested by the referral source; or**

(b) A CDPCRC professional shall believe that the individual requires an additional service; [Further programs are requested by the referral source, or any CDPCRC professional believes that the **individual** [applicant or client] requires further services; and]

(2) The program requested for the **individual** [applicant or client] **shall be** [is] available; and

(3) If applicable, the **individual shall have** [has] made arrangements to reimburse CDPCRC for the cost of services provided.

Section 4. Discharge Policy. (1) **An individual shall be voluntarily discharged from the CDPCRC if:** [Voluntary discharge from the CDPCRC may be for the following reasons:]

(a) The individual has completed a program of services, and is not qualified for another CDPCRC program;

(b) The individual does not desire further services from CDPCRC;

(c) The individual's medical condition requires treatment away from the CDPCRC for an extended period of time; or

(d) The individual wishes to leave CDPCRC and cannot be convinced to stay.

(2) **An individual** [applicant or client] **shall** [may] be involuntarily discharged from CDPCRC **if** [for any of the following reasons]:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available;

(c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others;

(d) **The individual has had an unexcused absence or unexcused tardy, as established in Section 6(3) of this administrative regulation, more than:**

1. Five (5) days in a three (3) month training program; or

2. Ten (10) days in a training program that exceeds three (3) months in duration; or [The individual has been unexcused, absent from class or tardy more than five (5) days in a three (3) month training program or more than ten (10) days in a training program exceeding three (3) months duration;]

(e) The individual is expelled for cause.

(3) When a decision is made to discharge an **individual** [applicant or client] for failure to make progress for medical, psychological, behavioral, or personal reasons, these procedures shall be followed:

(a) The decision to discharge from a particular program shall:

1. Be made by the program manager, with documentation and participation by staff within the department; and

2. Not automatically be considered a discharge from the facility; and [-Discharge from a particular program does not necessarily imply discharge from the facility-]

(b) If [Should] the reason for discharge necessitate services outside the facility (e.g., medical, psychological), the **individual** [applicant or client] **shall be eligible for readmission** [may be readmitted] when the problem is resolved.

(4) **An individual** [The applicant or client] **shall** [may] be discharged from CDPCRC without prior notice if necessary to prevent harm to **a person** [persons] or property, or to prevent serious disruption of **a CDPCRC program** [programs].

Section 5. Suspension and Expulsion Policy. **The director or a designee shall suspend or expel an individual from CDPCRC pursuant to the requirements established in this section.** [The director or a designee may suspend or expel **an individual** [applicants or clients] from CDPCRC when it has been determined that the **individual's** [applicant's or client's] behavior has upset the order of the institution, or has endangered the safety of others, or indicates that the **individual** [applicant or client] is persistently unwilling to comply with the lawful administrative regulations for the governance of CDPCRC-]

(1) Suspension.

(a) **An individual** [applicant or client] **shall** [may] be suspended [or expelled] for any of the following specific reasons:

1. Physical abuse of another person;

2. The threat or use of violence;

3. The possession or use of alcohol, a controlled substance, or being under the influence of alcohol or a controlled substance on CDPCRC grounds, or at a CDPCRC-sponsored activity;

4. Stealing, destruction of, or defacing of CDPCRC or private property;

5. The carrying or use of **a weapon** [weapons];

6. Documented, persistent refusal to participate in a planned program of services; or

7. Flagrant violations of **the CDPCRC rules of conduct** [administrative regulations] that upset the order of the institution.

(b) Suspension shall mean a dismissal from CDPCRC for a period not to exceed twenty (20) class days.

(c) **Except as provided in paragraph (d) of this subsection, an individual** [applicant or client] shall not be suspended until after the following due process procedures have been followed:

1. The **individual** [applicant or client], or the parent or guardian if under eighteen (18) years of age or legally disabled, and the referring counselor, if applicable, shall be given oral or written explanation of the charges [against the applicant or client];

2. The **individual** [applicant or client] shall be given an explanation of the evidence on which the charges are based; and

3. The **individual** [applicant or client] shall be given an opportunity to present facts and views relating to the charges **to the director or a designee;**

(d) **The due process procedures established in paragraph (c) of this subsection shall be followed within five (5) class days following the effective date of a suspension if, in the judgment of**

the director or a designee, immediate suspension from CDPCRC was necessary to:

1. Protect a person or property; or

2. Prevent disruption of a CDPCRC program. [Due-process procedures shall precede any suspension from CDPCRC, except when immediate removal [of the applicant or client] from CDPCRC is necessary, in the judgment of the director or a designee, to protect persons or property or to prevent disruption of CDPCRC programs. In such cases, the due process procedures shall follow the suspension as soon as possible, but in no case later than five (5) class days following the effective date of the suspension.]

(2) Expulsion.

(a) The director or a designee shall [may] expel an individual [applicant or client] if [under the following conditions]:

1. The offense results in the individual [applicant or client] being convicted of a felony or misdemeanor committed on CDPCRC property, or while under the CDPCRC's jurisdiction;

2. The offense is a repeat of an earlier offense for which the individual [applicant or client] was suspended;

3. The offense is an instance of a history of persistent misconduct, and efforts to cause a change in the individual's [applicant's or client's] behavior have been unsuccessful;

4. The offense involves violence, and in the opinion of the director or a designee, another person is [others are] likely to be harmed if the individual [applicant or client] remains at CDPCRC; or

5. The offense is a flagrant and willful violation of the CDPCRC rules of conduct [administrative regulations], and in the opinion of the director or a designee, there is little likelihood that efforts to deter the individual [applicant or client] from committing similar offenses will be successful.

(b) An individual shall not [No individual shall] be expelled [expulsion shall occur] until the following procedures have been followed:

1. The director or a designee shall [appoint a person to] review the intent to expel [expulsion decision];

2. The person designated to review the intent to expel [decision] shall set a time for a review [hearing], within ten (10) class days of the proposed date of the expulsion;

3. The individual involved, and the parents or guardian if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the nature of the charges and the time and date set for the review [hearing];

4. The individual involved and the parents or guardian, if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the right to appear at the review [hearing] and to be represented by counsel or other representation and that failure to participate in the review shall [may] result in a decision to expel; and

5. An [The hearing shall be held, and the individual involved and the representative shall have the right to present evidence in the applicant's or client's behalf and to cross-examine witnesses; and

6. The hearing shall stand in place of the agency administrative review requirement, and the applicant or eligible individual [client] and the representative shall be informed of the right to appeal [a fair hearing].

(c) At the time [Whenever] an applicant or eligible individual [a CDPCRC enrollee] is informed of the intent to suspend or expel, the individual shall be also informed of the availability of the Client Assistance Program.

(d) If an appeal is desired, an applicant or eligible individual [client] who is dissatisfied with the results of the director's review of the expulsion decision [expedited administrative review] shall [may] request an impartial hearing pursuant to 781 KAR 1:010.

Section 6. Attendance Policy. (1) A student [Students] shall be treated uniformly in terms of [their] attendance at CDPCRC. Each classroom instructor shall maintain a uniform attendance accounting procedure.

(2) The instructor or training supervisor shall determine if [when] an absence or tardy from a scheduled class is excused or unexcused according to requirements established in this subsection:

(a) An absence shall be considered excused if the absence was due to:

1. The student's personal illness, injury, or accident;
2. A serious illness of a family member;

3. The death of a spouse, brother, sister, child (including a stepchild or foster child), a parent of the student or the student's spouse, or a grandparent of the student or the student's spouse;

4. A requirement to appear in court;

5. A military assignment; or

6. Another compelling circumstance making it unwise or inadvisable for the student to attend class.

(b) An absence shall be considered unexcused if the absence was not due to a reason listed in paragraph (a) of this subsection.

(c) A tardy shall be considered unexcused if the individual:

1. Is late for class; and

2. Does not have a note describing the reason for the tardiness from counseling, medical, or other professional staff.

(d) An individual shall present a medical statement as proof of an absence due to illness.

(e) An individual shall notify the counselor, teacher, or appropriate administrator of each absence and the reason for the absence:

1. Prior to the absence; or

2. As soon as possible after the absence.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 24, 1998

FILED WITH LRC: June 25, 1998 at 4 p.m.

WORKFORCE DEVELOPMENT CABINET Department for the Blind (As Amended at ARRS, September 8, 1998)

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.470(3), (5) [163.450 to 163.470], 29 USC, 706, 711, 723 [704], 34 CFR 361

STATUTORY AUTHORITY: KRS 163.470(5), 34 CFR 361.42

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the department to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation establishes [is necessary to establish] the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Assessment. (1) For the purposes of determining eligibility, assessment shall [may] include [but is not limited to]:

(a) Self report;

(b) Existing data from a qualified professional [professionals]; or

(c) A new report or measure [reports or measures] deemed necessary by the rehabilitation specialist. [To be eligible for rehabilitative services, an individual shall be examined by a medical specialist qualified in the diagnosis and treatment of functional impairment in terms of employment outcome.]

(2) The department may seek a second opinion regarding the determination of impairment and the need for a rehabilitative service. [rehabilitative services.]

Section 2. Vocational Goal. A service [Services] shall be provided in accordance with an individualized, written rehabilitation program that:

(1) Emphasizes the:

(a) Determination; and

(b) Achievement of a vocational goal; and

(2) Is consistent with an individual's:

(a) Strengths;

(b) Resources;

(c) Priorities;

(d) Concerns;

(e) Abilities;

(f) Interests; and

(g) Informed choice. [the abilities and capacities of the eligible individual.]

Section 3. Vocational Training at Institutions of Higher Education.

(1) A service provided at an institution of higher education shall comply with the provisions governing comparable benefits established in Section 15 [47] of this administrative regulation [on-comparable benefits].

(2)(a) Except as provided in paragraph (b) of this subsection, the amount paid by the department for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education.

(b) If [unless] the eligible individual is in a degree program not offered by an in-state public institution. The amount paid by the department for tuition shall be the amount charged for that degree program.

(3) The department shall [may] pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution.

(4) The department shall pay the cost of books, supplies, tools and other course material in accordance with:

(a) The need analysis prepared by the student financial aid office of the institution; or

(b) The actual cost of materials, if a need analysis is not available.

(5) Except as provided in subsection (7) of this section, the eligible individual shall maintain full-time status as defined by the institution, unless a status of less than full-time is needed to graduate in the current year.

(6) Except as provided in subsection (7) of this section, by the end of the second term or semester and throughout each subsequent term or semester, an eligible individual shall achieve the higher of:

(a) An overall "C" grade average; or

(b) Standing required for admission, licensure, or certification.

(7) An exception to a requirement established in subsection (5) or (6) of this section shall:

(a) Be granted if the eligible individual:

1. Has a need or circumstance that renders him unable to meet the requirement; and

2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution;

(b) Not compromise the program requirement that the employment objective of the client be:

1. Realistic; and

2. Attainable; and

(c) Not be granted for the requirements established in subsection (6) of this section for a period beyond one (1) year. [An exception:

(a) May be granted for this subsections (5) and (6) of this section if the eligible individual:

1. Has a need or circumstance that renders him unable to maintain those standards; and

2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

(b) Shall not compromise the program requirement that the employment objective of the client be:

1. Realistic; and

2. Attainable.

(c) To subsection (6) of this section shall not be extended beyond one (1) year.]

(d) Shall be consistent with 34 CFR 80.22.]

(8) The eligible individual shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) If an eligible individual does not maintain the standards of this section, the counselor shall:

(a) Terminate services at the institution of higher education; and

(b) Simultaneously notify the individual of the appeal procedure available under 782 KAR 1:040.

(10) A service [Services] terminated under subsection (9) of this section shall [may] be reinstituted if the eligible individual:

(a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or

(b) Subsequently meets the standard under which the service was [services were] terminated.

Section 4. On-the-job-training. On-the-job-training provided in

private or public employment other than within the department shall be subject to the following conditions:

(1) The eligible individual shall receive at least minimum wage;

(2) The employer shall provide to the eligible individual the same benefits and privileges that accrue to another employee.

(3) Prior to training, a written agreement shall be:

(a) Completed by the counselor, describing the goals and objectives of the training, including:

1. The length of training;

2. The skills taught;

3. Wages earned; and

4. An understanding that the eligible individual shall be hired permanently after successful completion of the training program; and

(b) Signed by the:

1. Department; and

2. Employer.

(4) The eligible individual shall strive to make satisfactory progress in the training. The employer shall provide training reports to the department documenting the satisfactory or unsatisfactory progress of the eligible individual.

(5) The agreement for on-the-job training shall [may] be terminated by the department, the employer, or the eligible individual if the conditions of this section are not met.

Section 5. Work Experience and Work Adjustment. A program of work experience in private or public employment other than within the department shall be provided according to the following conditions:

(1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience.

(2) A written agreement shall be completed by the counselor and signed by the department and employer or provider of services to designate:

(a) The length of the work experience;

(b) The number of hours to be worked each week;

(c) The payment that the individual shall receive; and

(d) Any payment to the provider by the department.

(3) The employer or provider shall monitor the performance of the individual in work experience and make periodic reports to the counselor; and

(4) The work experience contract shall [may] be terminated by the department [at-anytime] if it is determined by the department, employer, provider, or individual that the work experience is not beneficial to the individual.

Section 6. Physical and Mental Restoration. (1) An applicant or eligible recipient shall chose a specialist who is licensed to provide the approved physical or mental restoration service. [An applicant or eligible individual shall be free to make their own choice as to a specialist. The chosen specialist shall:

(a) Be qualified and licensed in accordance with:

1. State law; and

2. Administrative regulations;

(b) Skilled in a field appropriate to the applicant or eligible individual; and

(c) Agree to provide service in compliance with the law.]

(2) A restoration service [Restoration services] shall not be provided outside the Commonwealth of Kentucky, unless:

(a) The service is provided in a nearby out-of-state area routinely used for the convenience of the department;

(b) The out-of-state service shall be cost saving;

(c) The service is not provided in state; or

(d) The provision of an in-state service would delay service to an eligible individual at extreme medical risk.

Section 7. Maintenance. (1) Maintenance shall not be provided unless necessary to support and derive the full benefit of other services being provided.

(2) Maintenance shall:

(a) Begin after other services have begun; and

(b) Cease thirty (30) days after the eligible individual has achieved suitable employment.

(3) The department shall not pay more for an eligible individual's room and board at an institution of higher education than the highest

rate at an in-state public institution.

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 7 [6] of 200 KAR 2:006.

(5) An eligible individual shall clearly designate a maintenance expense. The department shall not provide [provided] for maintenance identified as personal expenses or miscellaneous expenses.

Section 8. Transportation. Transportation for an eligible individual shall be paid in accordance with the following:

(1) Transportation by a public common carrier shall be in the most economical means available.

(2) Private transportation by private vehicle shall be at the mileage rate established for a state employee in Section 7 of 200 KAR 2:006 [state employees by the Kentucky Finance and Administration Cabinet].

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for a state employee in Section 7 of 200 KAR 2:006 [state employees by the Kentucky Finance and Administration Cabinet].

(4) The total cost of transportation allowed for commuting between home and campus for an eligible individual who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for an eligible individual who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the eligible individual's home and the campus.

(6) Transportation shall [may] include relocation and moving expenses if necessary for an eligible individual to achieve placement in employment.

Section 9. Interpreter Services. Interpreter services shall be provided:

- (1) If sign language is a necessary means of communication for the individual; and
- (2) In conjunction with other services.

Section 10. Reader Services. Reader services shall be provided for a blind individual [if]:

- (1) If a recording [Recordings] of printed material is [materials are] not readily available through the volunteer recording services of the department; and
- (2) In conjunction with other services.

Section 11. Assistive Technology. (1) Assistive technology having the capacity to improve low vision shall be provided by an individual licensed to:

- (a) Make an individual prescription; and
- (b) Perform an individual fitting.

(2) Assistive technology shall [may] be provided if there is evidence that the eligible individual has the ability and capacity to successfully use assistive technology.

(3) Unusual or expensive assistive technology shall [may] be provided to an individual if use of a traditional aid or device is not feasible.

(4) An eligible individual shall return assistive technology to the department if it becomes unnecessary for the purpose for which it was provided.

(5) Assistive technology shall be:

- (a) Provided in a new or like new condition; and
- (b) Repaired or replaced by the department if, during the course of the written rehabilitation program, it becomes:

1. Defective;
2. Worn out; or
3. Obsolete.

(6) Unless involved in a postemployment service, [it shall be the responsibility of] the eligible individual shall have defective, worn out, or obsolete assistive technology repaired or replaced [to repair or replace defective, worn out, or obsolete assistive technology] after rehabilitation.

Section 12. Self-employment. The department shall [may] partici-

pate in a self-employment program for a client if:

(1) The eligible individual and proposed self-employment enterprise undergo a feasibility evaluation;

(2) The eligible individual:

(a) Obtains the required:

1. License;
2. Permit;
3. Certificate; or
4. Lease; and

(b) Operates the enterprise in conformity with federal, state, and local statutes and regulations;

(3) The department has the option to review the proposed record-keeping system:

- (a) Prior to establishment of the enterprise; and
- (b) Periodically for up to five (5) years; and

(4)(a) Except as provided in paragraph (b) of this subsection, the department's financial participation in the enterprise does not exceed \$5,000.

(b) An exception to the limit established in paragraph (a) of this subsection may be granted [Exceptions may be made] at the discretion of the director of client services, with sufficient documentation supporting the vocational goal of the eligible individual. [If it appears that the department will recover its cost of participation from another source, this amount may be exceeded.]

Section 13. Tools and Equipment. The department shall recover tools, equipment, and supplies provided for employment if their use by the eligible individual ceases.

Section 14. Recordings of Printed Materials. A cassette recording of a textbook or [textbooks and] other vocational material [materials] shall be made available through the department's volunteer recording program.

Section 15. Comparable Benefits. (1) If an eligible individual is provided training services at an institution of higher education, he shall annually apply for comparable benefits available through the financial aid office of the institution.

(2) The department shall maintain a cooperative agreement for improved coordination of comparable benefits for an eligible individual enrolled in an institution of higher education with the:

(a) Kentucky Association of Student Financial Aid Administrators; and

(b) Kentucky Higher Education Assistance Authority.

(3) Grant assistance, including a gift, endowment, or scholarship provided for a client enrolled in an institution of higher education, shall be considered a comparable benefit.

(4) The following forms of financial assistance shall not be considered a comparable benefit for an eligible individual enrolled at an institution of higher education:

- (a) A guaranteed student loan;
- (b) A national direct or student loan;
- (c) A work study payment;
- (d) Other aid termed as self-help; or
- (e) An unrestricted monetary award from a civic, professional, or social organization.

(5) [The department shall:

(a) Determine the need and cost of service for an eligible individual from:

1. Federal law; and
2. State law and administrative regulations.

(b) Not be bound by a determination of need and cost of service made by a financial aid office of an institution of higher education.

(6)](a) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(b) If there is not a clear designation, the award shall be prorated by percentage to pay in part for the expense of:

1. Tuition and fees;
2. Books and supplies;
3. Room and board;
4. Personal expenses; and
5. Transportation.

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(c) The percentage used for distribution shall be the amount of the award divided by the total expenses listed in paragraph (b) of this subsection.

Section 16. Participation of Individual in the Costs of Services. [(+) The financial need of an individual with a disability shall not be considered by the department in the provision of services.

[(2) An individual determined to be eligible for services shall be asked to voluntarily participate to help pay the costs of the individualized written rehabilitation program.

(3) Services shall not be denied to an individual who:

(a) does not have available resources; or

(b) Refuses to participate.];

Section 17. Emergency Denial of Services. The department **shall** [may] immediately suspend or terminate services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 18. Order of Selection. (1) If the commissioner determines that the agency lacks available funds for all eligible individuals who apply for services, [then] the department shall follow an order of selection to give service priority according to a ranking of categories of eligible individuals based on the severity of disability as follows:

(a) Priority Category One shall include an eligible individual whose:

1. Impairment seriously limits four (4) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires three (3) or more services.

(b) Priority Category Two shall include an eligible individual whose:

1. Impairment seriously limits three (3) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires three (3) or more services.

(c) Priority Category Three shall include an eligible individual whose:

1. Impairment seriously limits two (2) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires two (2) or more services.

(d) Priority Category Four shall include an eligible individual whose:

1. Impairment seriously limits one (1) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires two (2) or more services.

(e) Priority Category Five: All other eligible individuals.

(2) Priority for services shall be given to an eligible individual with a more serious impairment.

(3) The order of selection shall be implemented on a statewide basis.

(4) An eligible individual who is a public safety officer, as defined in **29 USC 706(12)** [Section 7(12) of 20 USC 701], shall receive priority for services with each priority category.

(5) The department shall conduct an assessment to determine an individual's:

(a) Eligibility for vocational rehabilitation services; and

(b) Priority under the order of selections.

(6) The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; or [and]

2. Applicant;

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; or [and]

2. Priority under the order of selection; or

(c) An eligible individual who is in the process of receiving services at the effective date of the order of selection.

(7) An eligible individual shall be immediately reclassified into a higher priority category if his [their] level of impairment increases and is documented.

(8) In the order of selection, an eligible individual in a closed priority category shall be placed on a waiting list until the priority category is reopened.

DENISE PLACIDO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 11, 1998

FILED WITH LRC: June 12, 1998 at 1 p.m.

CABINET FOR WORKFORCE DEVELOPMENT
Kentucky Assistive Technology Loan Corporation
(As Amended at ARRS, September 8, 1998)

789 KAR 1:010. General eligibility criteria for assistive technology loans.

RELATES TO: KRS **151B.450, 151B.465** [151B.190]

STATUTORY AUTHORITY: KRS **151B.465(9)** [151B.185, 151B.195]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.465(9) requires the Board of Directors of the Kentucky Assistive Technology Loan Corporation to promulgate administrative regulations **through the cabinet** to establish and administer a program for providing low-interest loans to qualified borrowers through qualified lenders for the acquisition of assistive technology. This administrative regulation prescribes when, and under what conditions, assistive technology loans shall be provided, in order to distribute limited funds equitably over the population of qualified borrowers.

Section 1. Definitions. (1) "Debt-to-income ratio" means the ratio of all monthly installment payments to total monthly income. [Monthly installment payments include, but are not limited to, rent, mortgage, credit card payments, and unsecured loans. Monthly installment payments shall not include maintenance costs such as food and utilities.];

(2) "Nonprofit organization" means an incorporated entity under the provisions of KRS **273.163 to 273.387** [Chapter 273] that is in good standing with the Kentucky Office of the Secretary of State.

Section 2. Loan Purposes. **The board shall:**

(1) Consider:

(a) A loan for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability; or

(b) An additional loan to finance a repair or provide maintenance; and

(2) Depending on the availability of funds and the applicant's eligibility for a loan, include in the amount of the loan:

(a) The cost of an assistive technology service, including an assessment or training, if the service is directly related to the assistive technology device; or

(b) An extended service agreement. [The board shall consider loans for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability. The cost of assistive technology services such as assessments, training, etc., may be included in the loan amount if the services are directly related to the assistive technology device(s) being purchased. Extended service agreements may be included in the amount of the loan. An additional loan may be considered to finance repairs and maintenance.];

Section 3. Eligibility. (1) **Except as provided in subsection (2) of this section,** to be eligible for a low interest loan from the board, an applicant shall:

(a) Be an individual **who meets the definition of qualified borrower established in KRS 151B.450(6) with a disability that is not of a temporary, transient, or acute nature;** [with a disability as defined in KRS 151B.450 or a parent or legal guardian of an individual with a disability. The disability shall not be of a temporary, transient or acute nature.];

(b) Have a debt-to-income ratio no greater than that stipulated in **the agreement [agreements] between the board and qualified lender pursuant to Section 10 of this administrative regulation;** [lender(s).];

(c) Be of legal age and have the legal authority to enter into a

contract [contracts]; and

(d) Be a resident of Kentucky for at least six (6) continuous months prior to the date of application.

(2) To be eligible for a low interest loan from the board, a non-profit organization shall:

(a) Provide assistive technology to an individual [individuals] with disabilities who is a resident [are residents] of Kentucky; and

(b) Affirm that, and explain how, the adaptive equipment will be used for a current or potential employee, client, customer, or other associated individual [employees, clients, customers, or other associated individuals] with disabilities as required by KRS 151B.450(6).

Section 4. Initial Verification of Disability. An applicant [Applicants] for an initial loan [initial loans] shall verify disability by furnishing one (1) or more of the following:

(1) A statement from a licensed medical professional indicating how the disability substantially affects one (1) or more major life activities as described [defined] in KRS 151B.450;

(2) Proof of enrollment in one of the following:

(a) State vocational rehabilitation program;

(b) Social Security Disability Insurance (SSDI);

(c) Medicare enrollment based on disability;

(d) Medicaid enrollment based on disability;

(e) Veterans Administration enrollment based on current disability;

(f) Educational services enrollment under an individualized family service plan or individualized education plan; or [Section 504 of the Rehabilitation Act];

[(g) Children with special health care needs;

(h) Mental health or mental retardation services;

(i) Other comparable verification of disability;]

(3) Other proof of a disability that affects a major life activity as required by KRS 151B.450(6). [Demonstrate an obvious physical disability.]

Section 5. Required Application Information. The following material shall be required as part of the loan request:

(1) Legal name, current address and telephone number, and Social Security number (if a nonprofit organization, the employer identification number shall [will] substitute for the Social Security number);

(2) Nature of relationship to a person with a disability (if applicant does not have a disability);

(3) Nature of disability and how it affects one (1) or more major life activities as described [defined] in KRS 151B.450;

(4) Description of the assistive technology being requested and how it will compensate for the limitations of a disability and improve the quality of life of an individual with a disability;

(5) Amount of money requested including the cost [any costs] for an extended warranty [warranties], insurance, necessary training, or other item requested to be included in the amount of the loan [etc]. An itemized price quote from the potential seller shall be attached;

(6) Total current monthly income with sources;

(7) Total monthly installment payments, which shall:

(a) Include the amount paid in [including, but not limited to;] rent, mortgage, credit card payments, or [and] unsecured loans; and

(b) Not include maintenance amounts for food and utilities;

(8) A signed statement that all submitted information is truthful and accurate;

(9) A signed waiver allowing the release of information about the individual between the board and the qualified lender[s];

(10) In the case of a nonprofit organization, proof of that [such] status as defined in Section 1(2) of this administrative regulation.

Section 6. Loan Application Procedure. (1) [Each request for a loan shall attach all information and documentation when filing with the board.] A loan request shall:

(a) Include as attachments all required information and documentation; and

(b) Be submitted to the Department of Vocational Rehabilitation,

209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440.

(2) After review of the request, the board of directors shall [may] require the applicant to obtain an evaluation from an assistive technology professional, medical professional or other professional if more information is needed for the board to make a decision.

(3) An application shall include a quote for the total price of the equipment [and/or service for which the loan is being requested]. The board shall [may] require the applicant to obtain additional price quotes if it considers the submitted quote to be unusually high, unless the applicant can demonstrate that the equipment is available [only] from a single source.

(4) If the board preapproves a loan, the applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan. The qualified lender may conduct a credit check of the applicant. The qualified lender may reject the loan application [on the basis of an unfavorable credit report or other financial criteria agreed upon by the qualified lender and the board].

(5) The board shall notify the applicant of its decision in writing, or in appropriate alternative format as requested, within fifteen (15) days after the decision is made. If an application is denied, the reasons for the denial shall be specified based on eligibility requirements and loan requirements.

(6) (a) If desired, an applicant who is aggrieved by a decision of the board shall [may] petition the board for reconsideration, in writing or in appropriate alternative format, and provide additional documentation that addresses the stated reasons for denial.

(b) The board shall:

1. Consider the [any] new information;

2. [and shall] Provide the applicant with an opportunity to be heard; and

3. [The board shall] Inform the applicant of its decision at the meeting or in writing or in appropriate alternative format within seven (7) days if the applicant is not present at the meeting. The decision of the board shall be [is] final.

Section 7. General Loan Requirements. (1) The minimum amount of a loan shall be \$500 and the maximum amount of a loan shall be \$25,000.

(2) The period of a loan shall be from a minimum of one year to a maximum of ten years or the estimated life of a device, whichever is less. The loan period [Loan periods] shall be congruent with the agreement between the board and the qualified lender pursuant to Section 10 of this administrative regulation. [lender(s).]

(3) The assistive technology device shall be titled in the name of the qualified borrower with the board or its agent as lien holder. If the board is supplying secondary funding, the board or its agent shall become the holder of a secondary encumbrance.

(4) The board or the qualified lender[s] may require a qualified borrower to insure the equipment for the remaining value of the loan.

(5) The qualified borrower shall be responsible for the repair or [all repairs and] maintenance of the equipment. An additional loan may be considered to finance a repair or [repairs and] maintenance.

(6) [The board may require a qualified borrower to participate in a specified consumer credit counseling program.]

(7) An individual may secure more than one (1) loan if the total amount of all loans do not exceed \$25,000.

(7) [(8)] The [board or the] qualified lender[(s)] may require a down payment.

Section 8: Priority Consideration. An application [(1) Applicants] shall be considered in the order in which it was received according to the following order of preference:

(1) [(a)] An individual with a disability or parent or legal guardian of a person with a disability who has no current loans through the board;

(2) [(b)] An individual with a disability or parent or legal guardian of a person with a disability who has one (1) or more existing loans through the board; and

(3) [(c)] A nonprofit organization.

[(2) Otherwise, applications shall be considered in the order in

which they are received.]

Section 9. Confidentiality. The application and all submitted information shall be held confidential.

(1) A [In addition,] board member [members] shall use an identification number for each application. Unless [numbers on all applications and, unless] otherwise required, the name, Social Security number, address, telephone number, and electronic mail address of the applicant shall not be revealed.

(2) The board shall meet in closed session if [when] discussing an individual application [applications] and shall refer to an application [applications] in open session [only] by its [the] identification number.

(3) The secretary of the cabinet or a designee shall maintain access to all records relating to an application or loan [applications and loans].

Section 10. Agreement with a Qualified Lender. (1) In contracting with one (1) or more qualified lenders, the board shall give primary consideration to:

(a) The lender's ability to provide loans statewide;

(b) The most favorable interest rate available for technology loans;

(c) The most favorable interest rate to be paid on corporation deposits; and

(d) The funds to be made available for technology loans over and above the amount of corporation funds on deposit.

(2) A qualified lender shall:

(a) Execute a written agreement with the board that establishes the requirements and conditions for issuing a loan, including the required debt-to-income ratio and the length of the loan; and

(b) Agree to abide by all administrative regulations pertinent to the corporation in relation to loans.

ALAN FARBER, Chair
SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 473, sec. 1, ch. 483, sec. 35 [1998 RS HB 496 Sec. 35, 1998 RS SB 353]

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 473, sec. 1, ch. 483, sec. 35 [1998 RS HB 496 Sec. 35, 1998 RS SB 353]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.3-245 authorized the Commissioner of Insurance to promulgate administrative regulations setting out the manner and form in which closed claim information from insurers should be reported. The department promulgated 806 KAR 3:130 to effectuate liability insurance closed claim reporting. The 1998 Kentucky General Assembly enacted 1998 RS SB 353 and 1998 RS HB 496 Sec. 35, thereby repealing KRS 304.3-245. Therefore, the administrative regulation requiring insurers to report closed claim information is no longer necessary and must be repealed.

Section 1. 806 KAR 3:130, Liability insurance closed claim reporting, is hereby repealed.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 19, 1998

FILED WITH LRC: June 30, 1998 at 4 p.m.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: KRS 304.39-350, 1998 Ky. Acts ch. 483, sec. 35 [1998 RS HB 496 sec. 35]

STATUTORY AUTHORITY: KRS 304.2-110(1), 1998 Ky. Acts ch. 483, sec. 35 [1996 RS HB 496 sec. 35]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the insurance code. KRS 304.39-350 required the commissioner to report to the Legislative Research Commission the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle. The Department of Insurance promulgated 806 KAR 39:080 to require insurers to report the information necessary for the commissioner to carry out his reporting duty in accordance with KRS 304.39-350. The last report from the insurers was due on August 15, 1996. Also, 1996 RS HB 496 sec. 35 repealed the commissioner's reporting requirement in KRS 304.39-350. Since the commissioner and the insurers of motor vehicles are no longer required to report personal injury information, it is necessary to repeal 806 KAR 39:080.

Section 1. 806 KAR 39:080, Reporting requirements for insurers of motor vehicles regarding payment of personal injury benefits, is hereby repealed.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 19, 1998

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**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, September 8, 1998)**

810 KAR 1:001. Definitions.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the commission's administrative regulations.

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these administrative regulations.

(4) "Association" means any person or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner principal by virtue of notarized appointment of agency lodged with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in the mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breeder" means the owner of the dam of a horse at the time the horse was foaled. A horse is "bred" at the place of its foaling.

(9) "Claiming race" means any race in which every horse running therein may be transferred in conformity with these administrative regulations.

(10) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(11) "Commission" means the Kentucky State Racing Commission. Commissioner is a member of the commission.

(12) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight. Racing day means a day on which races are conducted. Calendar days means consecutive days counted irrespective of number of racing days.

(13) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these administrative regulations.

(14) "Disciplinary action" means action taken by the stewards or the commission for a violation of an administrative regulation and can include suspension, revocation, voidance of a license, ejection or exclusion from association grounds, assessment of a forfeiture, or reprimand, any combination thereof.

(15) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(16) "Entry" means the act of nominating a horse for a race in conformance with these administrative regulations.

(17) "Equipment" means accouterments other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(19) "Field, or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizator, and the highest numbered horse within the numbering capacity of the totalizator and all horses of a higher number are grouped in the mutuel field.

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(21) "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race. A "free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(22) "Horse" means a thoroughbred registered with the Jockey Club in New York and when used in these administrative regulations, any thoroughbred irrespective of age or sex designation.

(23) "Ineligible" means a horse or person not qualified under these administrative regulations or conditions of a race to participate in a specified racing activity.

(24) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(25) "Lessee" means a licensed owner whose interest in a horse is a leaseholder.

(26) "Licensee" means a person or association that has been duly issued a currently valid license to participate in racing in this Commonwealth.

(27) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(28) "Match race" means a race between two (2) horses, for which no other horses are eligible.

(29) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of racing. A meeting shall begin at 10 a.m. of

the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(30) "Month" means calendar month.

(31) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(32) "Mutuel field" means the same as "field."

(33) "Nominator" means the person in whose name a horse is entered for a race. "Nomination" is a subscription or entry of a horse in a stakes or early closing race.

(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(35) "Place" when used in the context of a single position in the order of finish in a race, means second; when used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second.

(36) "Post" means the starting point of a race.

(37) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(38) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(39) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(40) "Purse" means the gross cash portion of the prize for which a race is run.

(41) "Purse race" means any race for which entries close less than seventy-two (72) hours prior to its running, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(42) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(43) "Racing official" means a racing commissioner, commission staff as duties require, and all association racing department employees, as duties require.

(44) "Recognized meeting" means any meeting with regularly scheduled races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club of New York and whose race records can be provided an association by the Jockey Club.

(45) "Registration certificate" means the document issued by the Jockey Club of New York certifying as to the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the Jockey Club. It shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a registration certificate when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(46) "Administrative regulations" when used in the plural, shall be deemed to mean all current administrative regulations promulgated by the commission; when used in the singular, shall be deemed to be confined to the numbered administrative regulation.

(47) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(48) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries therefor in conformance with these administrative regulations.

(49) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(50) "Secretary" means the duly appointed and currently serving

secretary of the commission.

(51) "Specimen" means a sample of blood, urine, or other specimen taken or drawn from a horse for chemical testing.

(52) "Stakes" means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race. These fees shall be included in the purse.

(53) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" [These stakes races, other than North American] shall exclude races not listed by the Jockey Club Information System International Cataloging Standards, Part One (1).

(54) "Stewards" means duly appointed racing officials with powers and duties specified in 810 KAR 1:004 serving at a current meeting in this Commonwealth.

(55) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(56) "Subscription" means nomination or entry of a horse in a stakes race.

(57) "Thoroughbred racing" means running contests between horses registered with the Jockey Club of New York, certified as having a thoroughbred pedigree, and ridden by a jockey. Thoroughbred racing shall be licensed by a governmental regulatory body.

(58) "Unplaced" means not among the first three (3) horses finishing a race.

(59) "Walkover" means a race in which the only starter or all starters represent single ownership.

(60) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(61) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(62) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).

(63) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(64) "Year" means twelve (12) consecutive months beginning with January and ending with December.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: April 8, 1998
FILED WITH LRC: April 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, September 8, 1998)

810 KAR 1:015. Claiming races.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), 230.260(3) requires that the commission promulgate administrative regulations prescribing conditions governing horse racing. This administrative regulation prescribes conditions for claiming races.

Section 1. (1) In claiming races a horse shall be subject to claim for its entered price by a licensed owner in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows:

(a) An applicant shall, fifteen (15) days prior to entering a claim, submit:

1. An application for owners' [owners] original license;
2. A financial statement;

3. A finger print card;

4. The name of a licensed trainer, or person eligible to be licensed as a trainer, who will assume care and responsibility for the horse claimed; and

5. The requisite fee for owners license.

(b) The certificate of eligibility shall be valid for the remainder of the calendar year.

(2)(a) A claim may be made by an authorized agent.

(b) An agent may claim only for the account of those for whom he is licensed as agent.

(c) The name of the authorized agent; and the name of the owner for whom the claim is being made shall appear on the claim slip.

(3) A person shall not claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.

(b) A claimed horse shall not remain in the same stable or under the care or management of the owner or trainer from whom it is claimed.

(4)(a) A person shall not claim more than three (3) horses [one (1) horse] from a race.

(b) Multiple claims submitted by the same authorized agent and/or trainer for a single horse shall not be permitted and shall be void. [An authorized agent shall not submit more than one (1) claim for a race.]

(c) Only one (1) claim shall be entered on behalf of a stable in a race if a stable consist of horses:

1. Owned by more than one (1) person; and
2. Trained by the same trainer;]

(5)(a) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed.

(b) The day following the day the horse is claimed shall be the first day;

(c) The claimed horse shall be entitled to enter whenever necessary to permit it to [may] start on the 31st calendar day following the claim.

(d) This subsection shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper, and starter allowance races.

(6)(a) A horse claimed in a claiming race shall not be sold or transferred, wholly or in part, within thirty (30) days after the day it was claimed, except in another claiming race.

(b) Unless the stewards grant permission for a claimed horse to enter and start at an overlapping or conflicting meeting in Kentucky, a horse shall not race elsewhere until the close of entries of the meeting at which it was claimed.

(7)(a) A claim shall be:

1. Made on Commission "Claim Blank";
2. Sealed in an envelope supplied by the Commission; and
3. Deposited in the association's claim box.

(b) The "Claim Blank" form and envelope shall be filled out completely and accurately.

(8)(a) Claims shall be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made.

(b) Money or its equivalent shall not be put in the claim box.

(c) A claim shall be valid if the claimant at the time of filing the claim has a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall:

- (a) Open the claim envelopes for each race as soon as the horses leave the paddock en route to the post; and
- (b) Check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11)(a) After the race has been run a horse that has been claimed shall be delivered to the claimant.

(b) The claimant shall present written authorization for the claim from the racing secretary.

(c) After written authorization has been presented, horses that are sent to the detention area for post race testing shall be delivered.

(d) Other horses shall be delivered in the paddock.

(e) A person shall not refuse to deliver a horse claimed out of a claiming race to the person legally entitled to the horse.

(f) If the owner of a horse that has been claimed refuses to deliver the horse to the claimant, the horse shall be disqualified from further racing until delivery is made.

(12)(a) A claim shall be irrevocable.

(b) Title to a claimed horse shall be vested in the successful claimant from the time the horse is a starter; and the funds transferred to the account of the previous owner, with said funds immediately available for future claiming transactions.

(c) The successful claimant shall become the owner of the horse whether it is:

1. Alive or dead;
2. Sound or unsound; or
3. Injured during the race, or after it.

(d) A claimed horse shall run in the interest of and for the account of the owner from whom it is claimed.

(13)(a) A person shall not offer to:

1. Enter, or enter into an agreement to claim, or not to claim; or
2. Attempt, or attempt to prevent another person from claiming any horse in a claiming race.

(b) A person shall not attempt by intimidation to prevent anyone from running a horse in a claiming race.

(c) An owner or trainer shall not make an agreement with another owner or trainer for the protection of each other's horse in a claiming race.

(14)(a) A claim that does not comply with the provisions of this administrative regulation shall be void.

(b) The stewards shall be the judges of the validity of a claim.

(15) A person holding a lien of any kind against a horse entered in a claiming race shall record the lien with the racing secretary or horseman's bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be presumed that none exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Claim Blank (Rev 96)"; and
- (b) Claim Blank envelope.

(2) This material may be inspected at Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: April 8, 1998
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PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, September 8, 1998)

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements relating to the running of a race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, no race shall be

started after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. No person shall touch a horse while in the paddock except its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the horse. If a trainer is to be absent from a track where his horses are participating in races, he shall provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. Every horse whose starting is obligatory shall run the course; except, the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post, the parade shall pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the jockey shall remount at the point at which thrown. If the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, the horse may be excused from parading with the other horses. The horse shall en route to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an injury occurs to any jockey or his equipment malfunctions, the starter may grant a delay to permit the substitution of a jockey or repair of equipment. During the delay, the starter may permit any jockey to dismount. If a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate. The starter shall reload the horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey, starter, or assistant starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist the horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the commission shall be used in starting all races on the flat except in cases permitted by the stewards. If a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutuel tickets. After consulting with the starter and viewing

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the patrol films or video tapes, the stewards then shall determine whether the horse was precluded from obtaining a fair start.

(2) If the stewards find the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; except if the horse ruled a nonstarter is part of a mutuel entry and another horse in the entry is not left at the post, there shall be no pari-mutuel refund.

(3) Stakes fees for the ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and thereby left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefor.

Section 11. Horses Failing to Finish. Any horse which starts in a race, but does not cross the finish line, or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced. Any portion of the purse that may normally accrue to the horse shall revert to the association.

Section 12. Fouls. A leading horse when clear is entitled to any part of the track. If a leading horse or any other horse in a race, swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause same, such shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. No horse shall be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse suspected of unformful racing. If the stewards find that the horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Whips. (1) If a jockey will not ride with a whip in a race, [in all races where a jockey will not ride with a whip,] an announcement shall be made over the public address system of the [such] fact.

(2) [Although] The use of a whip shall [is] not be required. A [any] jockey who uses a whip during a race shall be [is] prohibited from whipping a horse:

(a) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;

(b) During the post parade except when necessary to control the horse;

(c) Excessively or brutally causing welts or breaks in the skin;

(d) When the horse is clearly out of the race or has obtained its maximum placing; or

(e) Persistently even though the horse is showing no response under the whip.

(3) Correct uses of the whip shall be [are]:

(a) Showing horses the whip before hitting them;

(b) Using the whip in rhythm with the horse's stride; and

(c) Using the whip as an aid to keep [maintain] a horse running straight.

~~Section 16. Other Means of Altering Performance. [Use of Whips; Other Means of Altering Performance. Whips shall be used uniformly and the stewards shall take cognizance of unusual use or nonuse of a whip by a jockey.]~~ No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change thereof shall be approved by the stewards.

Section 17. [46.] Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter such official order of finish for the purposes of pari-mutuel wagering.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: April 8, 1998

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**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, September 8, 1998)**

811 KAR 1:090. Stimulants and drugs.

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

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

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

Section 1. (1) Except as provided herein, at every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of:

- (a) Drug;
- (b) Stimulant;
- (c) Sedative;
- (d) Depressant; or
- (e) Medicine.

(2) The tests shall be conducted on the:

- (a) Winning horse in every heat and race;
- (b) Winning horse and second place horse in every perfecta or quinella race;
- (c) Winning horse, or the second and third place horses in a trifecta, or each of them.

(3) The judges may order a horse in a race to be subjected to a urine test, or blood test, or both.

(4) The winning horse and second place horse in every heat or dash of a race at a track with a total purse in excess of \$5,000 may be subjected to a blood test, or a urine test, or both tests.

(5) A test shall be made by a qualified veterinarian and by a laboratory designated by the commission.

(6)(a) A positive test during a time trial shall be treated as a violation.

(b) The winning time shall be disallowed, and the trainer of record shall be:

- 1. Fined; or
- 2. Suspended; or

3. Fined and suspended.

(7) In its discretion, or at the request of a member, the commission may authorize or require a blood test, or urine test, or other test of a horse racing at a meeting.

Section 2. (1)(a) When a blood or urine sample is taken by a veterinarian, the owner, trainer or authorized agent shall be present.

(b) A sample shall be:

1. Placed in two (2) containers;

2. Immediately sealed, with the signature of the representative of the owner or trainer on the container.

(c) One (1) part of the sample shall be placed in a depository under the supervision of the presiding judge or other agency designated by the commission to be safeguarded until the report on the chemical analysis of the other portion of the split sample has been received.

(2) If a positive report has been received, an owner or trainer may request the commission to have the other portion of the split sample:

(a) Inserted with a subsequent group sent for testing; or

(b) Sent to another chemist for analysis, the cost of which shall be paid by the owner or trainer.

Section 3. (1) If there is a positive test finding the presence of a drug, stimulant, sedative, or depressant in the postrace test, the:

(a) Laboratory shall immediately notify the presiding judge; and

(b) Presiding judge shall immediately report the finding to the commission.

(2) If a positive report is received from the laboratory by the presiding judge:

(a) The person held responsible shall be notified; and

(b) A thorough investigation shall be conducted by or on behalf of the judges.

(3)(a) A time shall be set by the judges for a hearing to dispose of the matter.

(b) The time set for the hearing shall not exceed four (4) racing days after the responsible person was notified.

(c) The hearing shall be continued if the judges determine that circumstances justify a continuance.

(4) If the chemical analysis of blood, urine, or other sample of the postrace test taken from a horse indicates the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.

(5) Upon receipt of written notification of a positive test finding, the judges shall immediately suspend the horse from further participation in racing.

Section 4. A person who administers, influences, or conspires with another person to administer to a horse a drug, medicament, stimulant, depressant, narcotic, or hypnotic within forty-eight (48) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 [45] of this administrative regulation.

Section 5. If the postrace test or tests prescribed in Section 1 of this administrative regulation disclose the presence in a horse of a drug, stimulant, depressant or sedative, in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse with the intent to affect the:

(1) Speed or condition of the horse; and

(2) Result of the race in which it participated.

Section 6. A horse shall not be tubbed in ice in the paddock prior to its racing commitment.

Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.

(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test.

(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the

horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a drug, stimulant, sedative, depressant, or other substance that could result in a postrace positive test.

Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:

(a) Required by the provisions of this administrative regulations; or
(b) Ordered by the judges.

(2) The owner, trainer, driver, or agent of the owner of a horse that refuses to submit to a prerace blood test shall be required to submit the horse to a postrace blood test, or urine test, or both tests regardless of its finish.

(3) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse who refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 16 [45] of this administrative regulation.

Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.

(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:

(a) Forfeited; and

(b) Paid over to the commission for redistribution among the remaining horses in the race entitled to them.

(3) A forfeiture and redistribution of winnings shall not effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 10. Prerace Blood Test. If there is a prerace blood test that shows that there is an element present in the blood indicative of a stimulant, depressant, or unapproved medicament, the:

(1) Horse shall immediately be scratched from the race; and

(2) Officials shall conduct an investigation to determine if Section 5 of this administrative regulation was violated.

Section 11. Hypodermic Syringe Prohibited. (1) Except for a licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a drug, stimulant, or narcotic:

(a) Within the grounds of a licensed harness race track; or

(b) In or upon the premises which he occupies, or has a right to occupy; or

(c) In his personal property or effects.

(2) A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:

(a) Keep a log of his activities on "Veterinary Report Of Horses Treated"; and

(b) Submit a copy of "Veterinary Report Of Horses Treated" to the commission office of the track each day of a race meeting.

(2) The log shall include the:

(a) Name of horse;

(b) Nature of ailment;

(c) Type of treatment; and

(d) Date and hour of treatment.

(3) The veterinarian shall report to the presiding judge any internal medication given by him by injection or orally to a horse after he has been declared to start in any race.

Section 13. (1) A veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall:

(a) Use only one (1) time disposable type needles; and

(b) Not reuse a disposable needle.

(2) The disposable needles shall be kept in his possession until

disposed of by him off the track.

(3) A veterinarian, assistant veterinarian or his employee shall not leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 14. (1) Approval and prescription of lasix for racing shall be made:

(a) By the commission veterinarian, or a licensed veterinarian approved by the commission; and

(b) If the:

1. Commission or licensed veterinarian has seen the horse bleed from the nostrils; or

2. Horse has been scoped and declared a bleeder by the commission veterinarian or a licensed veterinarian.

(2) If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting.

(3) Only the commission veterinarian may administer lasix prior to a race, including qualifying, nonbetting, pari-mutuel races, and time trials.

(4) The use of oral lasix shall be forbidden.

(5) The commission shall keep a record of horses using lasix for the first time.

(6) A schedule for scoping shall be maintained by the commission veterinarian.

(7) No more than 250 milligrams four (4) hours prior to a race shall be administered.

(8) A fee of ten (10) dollars shall be paid to the commission veterinarian when lasix is administered to a horse.

(9) If a trainer no longer wishes to use lasix:

(a) A "Termination of Lasix" shall be submitted to the commission office at the track; and

(b) Before being allowed to race without lasix, a horse shall:

1. Perform in a qualifying race without the use of lasix; and

2. Meet the standards of the meeting; and

(c) A horse shall qualify and meet the standards of the meeting prior to being permitted to use lasix again.

(10)(a) Testing shall be quantitative, and with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner.

(b) Testing shall be at random, not to exceed six (6) samples per day.

(c) A mutual decision to take random samples shall be made by the commission veterinarian and the judges.

(d) A second violation of this subsection shall result in a fine against the owner, not to exceed \$5,000.

(11)(a) If a horse bleeds through normal treatment with lasix, the horse shall not be eligible to race for 120 days.

(b) After 120 days, the horse shall again qualify on lasix. If the horse bleeds, it shall not be eligible to race for one (1) year.

Section 15. Phenylbutazone. (1) A trainer who requests permission to race his horse [Trainers who wish to race their horse(s)] on phenylbutazone shall [must] complete the Phenylbutazone Use Form. This form shall [must] be submitted to the commission veterinarian before the time of entry. [by the prescribed scratch time.]

(2) A trainer who requests permission to remove his horse [Trainers who wish to remove their horse(s)] from the phenylbutazone program shall [must] complete the Phenylbutazone Removal Form. This form shall [must] be submitted to the commission veterinarian by the [prescribed scratch] time of entry.

(3) A horse that is [Horses which are] not properly registered shall not be permitted to race with phenylbutazone.

(4) The oral or intravenous administration of phenylbutazone shall not be permitted within twenty-four (24) hours of post time of the first race.

(5) The phenylbutazone dosage administered shall not exceed:

(a) Two (2) grams (g) oral; or

(b) Two (2) grams (g) intravenous.

(6) A [Any] post race sample reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be subject to the penalties provided in Section 16 of this administrative regulation.

(7) The trainer of a [any] horse that tests above the normal limit for phenylbutazone shall be held responsible.

(8) The oral administration of phenylbutazone may be performed by the trainer.

(9) Phenylbutazone, injected intravenously, shall [must] be administered by the commission veterinarian or a licensed veterinarian approved by the commission.

(10) The commission veterinarian or licensed veterinarian shall keep a log of [this] phenylbutazone activity as provided by [set forth in] Section 12(1) of this administrative regulation.

Section 16. Unless otherwise provided, the penalty for violation of the provisions of this administrative regulation shall be:

(1) A fine not to exceed \$5,000;

(2) Suspension not to exceed one (1) year;

(3) A fine not to exceed \$5,000, and a suspension not to exceed one (1) year; or

(4) Expulsion.

Section 17. [16:] Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Termination of Lasix, KRC-1(8/97)"; [and]

(b) "Veterinary Report Of Horses Treated, KRC-2(8/97)";

(c) "Phenylbutazone Use Form KRC-7(9/98)"; and

(d) "Phenylbutazone Removal Form KRC-8(9/98)".

(2) This material may be inspected, copied, or obtained at Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

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CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(As Amended at ARRS, September 8, 1998)

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

RELATES TO: KRS 205.520, 42 USC 1396a, PL 105-33

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 Ky. Acts ch. 426, sec. 4(3) [GAHB-132]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance] in accordance with Title XIX of the Social Security Act. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the special coverage factors applicable to both categorically needy and medically needy individuals eligible for benefits under Title XVIII, Part A, Hospital Insurance Benefits (HIB); Title XVIII, Part B, Supplementary Medical Insurance (SMI); Title XVIII Qualified Medicare Beneficiaries (QMB); [and] Title XVIII Qualified Disabled Working Individuals (QDWI); Title XVIII, Specified Low-Income Medicare Beneficiaries (SLMB); and Title XVIII, Qualified Individuals (QI).

Section 1. Purchase of Coverage under SMI. The cabinet shall pay the SMI premium for a recipient [all] [recipients] eligible for SMI [such] coverage who is [are] receiving a money payment under either the Supplemental Security Income program or the state program of optional or mandatory supplementation.

Section 2. Deductibles and Coinsurance. [Effective for services provided on or after February 1, 1989:] The cabinet shall pay the deductible or coinsurance amount for a [any] medical service covered under HIB or SMI to an individual eligible for HIB or SMI [such] coverage. The actual amount paid for coinsurance shall be the uncovered

percentage of the total permissible cost for the service established in 907 KAR Chapters 1 and 3 [as determined by the cabinet].

Section 3. Limitations Applicable to Nonmoney Payment Recipients. An [Any] HIB or [I] SMI eligible categorically needy or medically needy individual, for whom the cabinet does not purchase SMI coverage, shall [is expected to] retain HIB or [I] SMI coverage, with premium payments considered as an income deduction. Failure to retain this [such] coverage shall [does] not obligate the cabinet for [any] payment in excess of the deductible and coinsurance amounts.

Section 4. Coverage for Qualified Medicare Beneficiaries. (1) A qualified Medicare beneficiary [Effective January 1, 1989, qualified Medicare beneficiaries] as defined in 907 KAR 1:011 shall be entitled to the following coverage, regardless of whether the medical service is covered under the medical assistance program as a regularly covered service:

- (a) Payment of Part A and Part B Medicare premiums;
- (b) Deductibles; and
- (c) Coinsurance.

(2)(a) A provider who does not regularly participate in the Medicaid Program shall file an agreement with the Department for Medicaid Services for limited participation in the Medicaid Program.

(b) If a provider does not file an agreement with the department, the service shall not be considered covered under this section. [For providers not regularly participating in the Medicaid program, the appropriate agreement must be made with the Department for Medicaid Services to provide for limited participation in the Medicaid program; if the appropriate agreement is not made, the services will not be considered to be covered under this section.]

Section 5. Qualified Disabled Working Individuals. [Effective July 1, 1990:] In accordance with Section 6408(d) of the Omnibus Budget Reconciliation Act of 1989, the cabinet shall pay the Medicare Part A premium for a recipient [all] [recipients] who meets [meet] [all] the requirements to be a qualified disabled working individual as defined in Sections 1818 or [and] 1905(s) of the Social Security Act.

Section 6. A specified low-income Medicare beneficiary [beneficiaries] as defined in 907 KAR 1:011 shall be [are] entitled to payment of the Part B Medicare premium.

Section 7. Qualified Individuals (QI). (1) A qualified individual [Qualified Individuals] (QI) as defined in 907 KAR 1:011 shall be entitled to payment of the Part B Medicare premium for Group I and the payment of that portion of the Medicare Part B premium attributable to home health costs for Group II.

(2) The number of individuals eligible in this group shall be limited by a block grant and eligibility shall be established on a first-come first-serve basis.

(3) In calendar years following the year of initial approval, preference shall be given to the individuals who qualified the previous year.

(4) Coverage pursuant to this section [for this group] shall terminate on January 1, 2003.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

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CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 CFR 435, 403, 45 CFR 233.100, 8 USC 1612, 1641[a, b-e], 38 USC 101, 107, 1304, 5303A,

42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 Ky. Acts ch. 426, sec. 4(3) [HB 132, 1998 GA] [42 CFR 403, 405, 45 CFR 233.100, 8 USC 1641a, b, c, 38 USC 101, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a, b, c, d, e, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation to comply with any [a] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

Section 1. Definitions. (1) "Child" means a dependent person who:

(a) 1. Is under the age of eighteen (18); or

2. Is under age nineteen (19) if the person is:

a. A full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Expected to complete the program before age nineteen (19);

(b) Is not self-supporting;

(c) Is not a member of the Armed Forces of the United States; and

(d) If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative.

(2) "Kentucky Transitional Assistance Program (K-TAP)" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF) Program, a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(3) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(4) "Qualified alien" is defined in 8 USC 1641(a) through (c).

(5) "Veteran" is defined by 38 USC 101(2).

Section 2. The Categorically Needy. An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically needy individual. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation.

(1) A child in a foster family care or private nonprofit child caring institution dependent in whole or in part on a governmental or private agency;

(2) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(3) A pregnant woman;

(4) A child of unemployed parents;

(5) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(6) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(7) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards;

(8) A child (but not his parents) who:

(a) Would have been financially eligible for Aid to Families with

Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

(b) [who was born after September 30, 1983 and who is under the age of five (5); and effective July 1, 1987, a child (but not his parents) who would have been financially eligible for Aid to Families with Dependent Children benefits using AFDC methodologies in effect on July 16, 1996, who] Meets the definition of Section 1(1) of this administrative regulation;

(9) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

(a) The child;

1. Has not reached his first birthday; and

2. Resides in the household of the woman; and

(b) The woman remains (or would remain if pregnant) eligible for the assistance; [In this situation, an application shall be deemed to have been made and the child found eligible for Medicaid as of the date of birth;]

(10)(a) Except as provided in paragraph (c) of this subsection, an individual in an institution meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

(b) Except as provided in paragraph (c) of this subsection, eligibility for a similar hospice participant or [and] similar participant in a waiver project [the waiver projects] of home and community based services for the mentally retarded or [and] the aged, blind or disabled shall be determined using the method established in paragraph (a) of this subsection.

(c) [also be determined under this provision:] Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall not be determined in accordance with this subsection [provision];

(11) A qualified severely impaired individual as specified in 42 USC 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(12) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in 42 USC 1383c;

(13) An individual specified in 42 USC 1383c who;

(a) Loses SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f);

(b) Would be eligible for SSI or SSP except for these benefits; and

(c) Is not entitled to hospital insurance benefits under the Medicare program;

(14) A woman during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy) or a [-and-an-infant-and] child under six (6) years of age, as specified in 42 USC 1396a(l)(1), shall be required to meet the income requirements for this eligibility group as specified in 907 KAR 1:640;

(15) If an eligible [infant-or] child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the [infant-or] child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the [infant-or] child remains otherwise eligible except for age;

(16) Applicable with regard to a determination [determinations] of eligibility for a period [periods] beginning on or after July 1, 1991, a child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 USC 1396a(l)(1); [and]

(17) Applicable with regard to a determination [determinations] of eligibility for a period [periods] beginning on or after July 1, 1998, if [providing-that] federal Medicaid matching funds are available to cover the costs of the program, a child born on or before September 30, 1983 who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(l)(1);

(18) Applicable with regard to a determination [determinations] of eligibility for a period [periods] beginning on or after January 1, 1991, a disabled widow, widower or [and] disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or [and] disability insurance (OASDI) benefit resulting

from a change in the definition of disability;

(19) A child who:

(a) Was receiving supplemental security income on August 22, 1996; and

(b) Except [but] for the change in definition of childhood disability would continue to receive supplemental security income; or [and]

(20) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

Section 3. The Medically Needy. An individual (including a child pursuant to [as shown in] Section 2(8) of this administrative regulation) or [and] a pregnant woman meeting the income and resource standards of the medically needy program meeting technical requirements comparable to the categorically needy group who has [; but-with] sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in [prescribed by] [907 KAR 1:604 and] 907 KAR 1:640 through 907 KAR 1:665 [of the Cabinet for Health Services]. The medically needy eligible groups shall include:

(1) A pregnant woman during the course of her pregnancy; and

(2) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, [and] Qualified Disabled Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be [is] extended to a qualified Medicare beneficiary as specified in 42 USC 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645 [1:604], and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) [-and-may] Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. [but-not-retroactively-and-not] For the month in which the determination was [is] made.

(2) A qualified disabled working individual as defined in 42 USC [1396i-2 and] 1396d(s) [of the Social Security Act] shall be eligible under Medicaid for payment of his Medicare Part A premiums as shown in 907 KAR 1:006.

(3) A specified low-income Medicare beneficiary [beneficiaries] as defined in 42 USC 1396a(a)(10)(E)(iii) [of the Social Security Act] shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual [individuals] group 1 (QI-1) as established in 42 USC 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

(5) A Medicare qualified individual [individuals] group 2 (QI-2) as established in 42 USC 1396a(a)(10)(e)(iv)(II) shall be eligible for payment of that portion of the Medicare Part B premium attributable to home health costs.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual [of families and individuals] included as categorically needy under Section 2[(1) through (19)] [(7)] of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition of Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regula-

tion, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children shall include:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

1. The work is intermittent; and

2. The excess is of a temporary nature as evidenced by the fact that the individual:

a. Was under the 100 hour standard for the prior two (2) months; and

b. Is expected to be under the standard during the next month;

(b) The individual:

1. Has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application; or

2. [the individual] Within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent shall not have refused suitable employment without good cause as determined in accordance with 45 CFR 233.100(a)(3)(ii);

(4) Pursuant to [Under the definition contained in] subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work if it is anticipated he shall [can] return to work within thirty (30) days; [or]

(b) On strike, or unemployed as a result of involvement in a labor dispute if the involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; [or]

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; [or]

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual shall be at least sixty-five (65) years of age.

(6) A blind individual shall meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income [and] (SSI).

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 USC 423(d) and 42 USC 1382c(a)(3) relating to RSDI and SSI.

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods.

The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection. [has specified eligibility and reporting requirements.]

(a) The first transitional six (6) month benefit period shall begin [begins] with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month

the family no longer includes a dependent child. [for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child determined in accordance with usual program requirements.]

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall meet the following conditions:

a. Received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Gross income minus child care cost shall be [is] less than 185 percent of the federal poverty income level;

d. The reporting requirements shall have been met no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, the caretaker relative shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed [was] employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child. [for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child determined in accordance with usual program requirements.]

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin; [and]

10. First cousin once removed;

11. A relative of the half-blood;

12. A preceding generation [generations] denoted by a prefix [prefixes] of:

a. Grand;

b. Great;

c. Great-great; or

d. Great-great-great; or [and]

13. A stepfather, stepmother, stepbrother, stepsister; stepgrandmother, or stepgrandfather.

(10) An applicant who is deceased shall have eligibility determined

in the same manner as if he were alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be [a]:

1. a. A citizen of the United States; or

b. ~~[Effective January 1, 1997, and]~~ Except as provided in paragraph (b) of this subsection, a qualified alien admitted for permanent residence; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 CFR 435.403.

(b) A nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. Except as provided in subparagraph 2 of this paragraph, an alien shall meet all requirements for receipt of Medicaid.

2. An alien who does not receive a K-TAP or federal supplemental security income (SSI) cash payment shall:

a. Be qualified as a categorically needy recipient; and

b. Meet the income, resource and categorical requirements of the applicable cash assistance program.

3. The alien shall have (or have had within at least one (1) of the three (3) months prior to the month of application ~~[the usual period for retroactive eligibility]~~) an emergency medical condition not related to an organ transplant procedure, defined as a medical condition (including severe pain) in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

4. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department written documentation from the medical provider ~~[of acceptable documentation]~~ that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

5. The Medicaid to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not participating in a managed care partnership.

(a) Except as provided in paragraphs (b), (c), and (d) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of unemployment, eligibility shall:

1. Not exist for the thirty (30) day period following the starting date of the unemployment; and

2. Be ~~[In these cases, the effective date of eligibility may be as early as]~~ the first day following the end of the thirty (30) day period if all other conditions of eligibility are met.

(c) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month in which the thirty (30) day period ends.

(d) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(14) Benefits shall be denied to a family for a month in which a parent ~~[legally liable caretaker relative]~~ with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include ~~[The definition of a strike includes]~~ a strike or other concerted stoppage of work by em-

ployees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(15) A caretaker ~~[responsible]~~ relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) ~~[If a]~~ Resident or inmate of a nonmedical public institution;

(2) ~~[If a]~~ Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) ~~[If a]~~ Patient in a mental hospital or psychiatric facility unless the individual [he] is:

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

(b) Under ~~[or]~~ age twenty-two (22) if he was receiving inpatient services on his 21st birthday;

(c) ~~[or is]~~ Sixty-five (65) years of age or over; or

(d) ~~[unless the individual is]~~ Participating in Kentucky Medicaid's managed behavioral health care organization; or

(4) ~~[If a]~~ Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases unless the individual:

(a) Has reached age sixty-five (65); or

(b) ~~[unless the individual]~~ Is participating in Kentucky Medicaid's managed behavioral healthcare organization.

Section 7. Emergency Shelters. An individual (or family group) who is in an emergency shelter for a temporary period of time shall ~~[may]~~ be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if ~~[when]~~ the benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits; and

4. Unemployment compensation.

(2) An applicant or recipient shall not be required to apply for federal benefits if ~~[the federal law governing that benefit provides that]~~:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third Party Liability as a Condition of Eligibility. (1) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of

eligibility to cooperate with the Cabinet for Health Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, each applicant for or recipient of Medicaid shall ~~be required to~~ provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker [specified] relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent child [children], the parent or caretaker [specified] relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent child shall ~~still~~ be eligible for Medicaid if financial eligibility requirements are met.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department For Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)**

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, 1998 Ky. Acts ch. 426, sec. 4(3) [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) is defined by KRS 314A.010(3)(a). ~~[means an individual who:~~

~~(a) Has successfully completed a training program accredited by the American Medical Association's Committee on Allied Health Edu-~~

~~cation 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 the [usual] high intensity nursing facility patient status criteria established in [accordance with] 907 KAR 1:022, Section 4.

Section 2. General Coverage Provisions. (1) A service [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 pursuant to 907 KAR 1:672.

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); or
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) A physician shall:

(a) Evaluate the need for continuation of service; and

(b) Submit a completed MAP-9, Prior Authorization for Health Services, and a signed plan of treatment at least once every sixty (60) days. [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:

(1) ~~[(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.

(2) ~~[(b)]~~ The fixed fee for skilled nursing services provided by:

~~(a) [1:]~~ A registered nurse (RN) shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service.

~~(b) [2:]~~ A licensed practical nurse (LPN) shall be twenty-nine (29) dollars and ten (10) cents for each unit of service.

~~(c) [3:]~~ A respiratory therapist (RT) shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.

(3) [(e)] Reimbursement shall not exceed sixteen (16) units of service per day.

(4) [(d)] Payment shall not be made for a service to an [services to any] individual for whom it can reasonably be expected that the cost of the home- and community-based service [services] furnished under this administrative regulation would exceed the cost of the service [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.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)**

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

RELATES TO: KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 416, 1382c, 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520(3), 42 USC 1396a, 1998 Ky. Acts ch. 426, sec. 4(3) [1998 GA HB 132] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.~~] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. **Definition.** [~~Definitions:~~] "Partnership" is defined in 907 KAR 1:705.

Section 2. Eligibility Determination Process. (1) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria pursuant to this section and Section 3 of this administrative regulation and as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645 for the appropriate month of coverage.

(2) Each decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall [be required to]:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 1:011, 907 KAR 1:640, and 907 KAR 1:645; and

2. Give written consent to those contacts necessary to verify or

clarify a factor pertinent to the decision of eligibility.

(b) The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid shall be effective no later than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645; and

(c) 1. The applicant resides in a nonpartnership county; or

2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705.

(4) Eligibility for qualified Medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645.

(5) Retroactive eligibility for specified low-income Medicare beneficiary (SLMB) benefits, Medicare qualified individuals (QI) benefits or [and] qualified disabled working individuals shall be effective no later than the third month prior to the month of application if an individual meets technical and financial eligibility requirements as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645. Retroactive eligibility for a qualified individual shall not include months of a prior year.

Section 3. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days a change in circumstances which may affect eligibility. In addition, eligibility shall be redetermined:

(a) Every twelve (12) months; or

(b) If a report is received or information is obtained about a change in circumstances.

(2) Pursuant to the waiver granted by the Secretary, United States Department of Health and Human Services, and promulgated as 907 KAR 1:705, a recipient shall have a one (1) time guarantee of six (6) months of eligibility regardless of a loss of technical eligibility for Medicaid during that six (6) month time period if the recipient:

(a) Resides in a county included in a partnership;

(b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705;

(c) Did not receive Medicaid in any of the twelve (12) months preceding participation in a partnership;

(d) Participated in a partnership for less than six (6) months;

(e) Continued to reside in a partnership region during the guaranteed six (6) month eligibility period; and

(f) Is not an:

1. Incarcerated recipient;

2. Alien who is eligible for emergency Medicaid; or

3. A recipient requesting discontinuance of Medicaid.

Section 4. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving supplemental security income (SSI);

2. Is age sixty-five (65) or over;

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382c or 416 by either the Social Security Administration or the medical review team;

4. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer,

appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition;

5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability; [or]

(b) Received SSI based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition; [or]

(c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382C by the Social Security Administration; or

(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition.

(4)(a) A child who was receiving supplemental security income benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 USC 1396a(a)(10) would continue to receive SSI, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 904 KAR 2:470, the definition of childhood disability effective on August 22, 1996 shall be used.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)

907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, d, 1998 Ky. Acts ch. 426, sec. 4(3) [GA-HB-132]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program in accordance with 42 USC 1396 through 1396v [Title XIX of the Social Security Act]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or [and] disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Dependent child" means a child who is:

(a) Deprived of parental support due to death, incapacity, or absence of a parent; and

(b) [is] Under the age of:

1. Eighteen (18); or

2. [under age] Nineteen (19) if the child is:

a. In high school or the same level of vocational or training school; and

b. Expected to graduate before or during the month of his [their] 19th birthday.

(4) "Incapacity" means any condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(5) "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pension, black lung benefits, or railroad retirement benefits[-etc-]), pension plans, rental property, investments, or wages for labor or services.

(6) ["Minor parent" means a parent under the age of twenty-one (21):

(7)] "Lump sum income" means money received at one (1) time which is normally considered as income, including [e.g.], accumulated back payments from Social Security, unemployment insurance or [and] workman's compensation, back pay from employment, money received from an insurance settlement, gift, inheritance, lottery winning, [insurance settlements, gifts, inheritances, lottery winnings;] noncontinuing proceeds from a bankruptcy proceeding, money [proceedings, monies] withdrawn from an IRA, KEOGH plan, [IRA's, KEOGH plans;] deferred compensation, tax deferred retirement plan, or [plans, and] other tax deferred asset.

(7) "Minor parent" means a parent under the age of twenty-one (21).

(8) "Official poverty income guidelines" means the poverty income guidelines which are:

(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 USC 9902(2); and

(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.

(9) [assets:

(8)] "SSI" means supplemental security income program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, income shall be determined by comparing adjusted income as required by [defined in] Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$ 2,600	\$ 217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for a pregnant woman or child [pregnant women, infants and children] eligible pursuant to 42 USC 1396a(e):

(a) A pregnant woman or a child [Pregnant women and children] under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines.

(b) A child [Children] age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines.

(c) A child [Children] born after September 30, 1983, who has [have] attained six (6) years of age but has [have] not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines.

(d) A pregnant woman or child [Pregnant women, infants and children] who would be eligible under provisions of 42 USC 1396a(l) [(+)] of the Social Security Act except for income in excess of the allowable standard shall not become eligible by spending down [pursuant to [described in] Section 9 of this administrative regulation] to the official poverty guidelines;

(e) A change [Changes] of income that occurs after the determi-

nation of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income limits and provisions shall be applicable for a determination [determinations] of eligibility of a qualified Medicare beneficiary [beneficiaries], specified low-income Medicare beneficiary [beneficiaries], [and] qualified disabled working individual, or Medicare [individuals and] qualified individual [individuals].

(a) A qualified Medicare beneficiary [beneficiaries] shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary [beneficiaries] shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) Medicare qualified individuals shall be [are] divided into two (2) groups:

1. Group one (1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

2. Group two (2) shall have income greater than 135 percent of the official poverty income guidelines but less than or equal to 175 percent of the official poverty income guidelines.

(d) A qualified disabled working individual [individuals] shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) [The official poverty income guidelines as referenced in this section shall be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

(5) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 USC 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 CFR 435.122.

(5) [(6)] Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 CFR 435.135.

Section 3. Income Disregards. In comparing income with the scale established [as contained] in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In an AFDC related Medicaid case [cases], the standard work related expenses of an adult member or [adult members and] out-of-school child [youth] shall be deducted from gross earnings. For a person [those] with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. All earnings of an in-school child shall be disregarded.

(2) In an AFDC related Medicaid case [cases], child care as a work expense shall be allowed for a child who is [child(ren) who are] living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Section 5(9)(b) [the appropriate degree as defined by the AFDC Program] for full-time and part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The child care work expense allowed shall not exceed, per month:

1. \$200 for full-time or part-time employment per child under age two (2); and

2. \$175 for full-time employment or \$150 for part-time employment per:

a. Child age two (2) or [and] above; or

b. [and for each] Incapacitated adult.

(3) In an ABD Medicaid case [cases], income disregards shall be those applicable in the federal SSI program established in 42 USC 1382a(b).

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time.

(2) An amount equal to the appropriate income limitations scale established [as described] in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the Medicaid eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(3) Any amount actually paid by the stepparent or grandparent to an individual [individuals] not living in the home who is [are] claimed by him as a dependent [dependents] for purposes of determining his personal income tax liability.

(4) A payment [Payments] by the stepparent or grandparent for alimony or child support with respect to an individual [individuals] not living in the household.

(5) Income of a stepparent or grandparent receiving SSI.

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. (1) For an AFDC related Medicaid case [cases], lump sum income shall be divided by the medically needy income level and prorated over the resultant number of months. A deduction [deductions] from the lump sum may be allowed for related or extraordinary expenses.

(2) For an individual [individuals] eligible under the federal poverty level standards specified in Section 2(2)(a), (b) and (c) of this administrative regulation, lump sum income shall be divided by the appropriate standard for the eligible group and prorated over the resultant number of months. A deduction [deductions] from the lump sum may be allowed for related or extraordinary expenses.

(3) For an ABD Medicaid case [cases], lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit [Payments or benefits] from a federal statute [federal statutes], other than SSI benefits, shall be excluded from consideration (as income) if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment [Cash payments] intended specifically to enable an applicant or recipient [applicants or recipients] to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment [payments] shall not be considered available in the eligibility or [and] posteligibility treatment of income of an individual [individuals] in a nursing facility or hospital [facilities or hospitals] or who is [are] receiving home and community based services under a waiver.

(5) A Social Security cost of living adjustment [adjustments] on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary [beneficiaries], specified low-income Medicare beneficiary [beneficiaries], [and] qualified disabled working individual or Medicare [individuals and] qualified individual [individuals] until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government, is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran [Veterans] in a nursing facility who is [are] receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) ~~[but the ninety (90) dollar payment shall be]~~ Considered as income in the posteligibility determination process.

(8) An Austrian Social Insurance payment [payments] based, in whole or in part, on a wage credit [wage-credits] granted under Sections [paragraphs] 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(9) An individual retirement account, KEOGH plan or [accounts; Keogh-plans and] other tax deferred asset [assets] shall be excluded as income until withdrawn.

(10) Disaster relief assistance shall be excluded as income.

(11) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be exempted from consideration by the cabinet; except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) shall not be allowed in determining eligibility for Medicaid only].

(12) In accordance with 42 CFR 435.122 and Section 4735 of PL 105-33 any payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(13) In accordance with 42 CFR 435.122 any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

Section 7. Consideration of State Supplementary Payments. For an individual receiving a state supplementary payment [payments], that portion of the individual's income which is in excess of the basic maintenance standard (established [contained] in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1)(a) An increase in a [increases in] Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit or state supplementary payment.

(b) An individual who would otherwise be eligible for an SSI benefit or state supplementary payment shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 9 of this administrative regulation. [payments due to cost-of-living increases but for which the individual would be eligible for SSI benefits or state supplementary payments shall be disregarded in determining eligibility for Medicaid benefits; these individuals shall remain eligible for the full scope of program benefits with no spend-down requirements (described in Section 9 of this administrative regulation).]

(2) For an individual [individuals] who applied by July 1, 1988, the additional amount specified in 42 USC 1383c(b) shall be disregarded, meaning [i.e.,] that amount of Social Security benefits to which a specified widow or widower was [certain widows or widowers were] entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual [these individuals] would be eligible for federal SSI benefits.

Section 9. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) An individual [individuals] with income in excess of the basic maintenance scale established [as contained] in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in a period [periods] prior to the quarter for which spend-down eligibility is being determined may be

used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

(4) The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)**

907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 CFR Part 435, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520, EO 96-862, 1998 Ky. Acts ch. 426, sec. 4(3) [GA HB 132]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "K-TAP" is defined in 907 KAR 1:011.

(3) "Poverty level guidelines" means the [official] poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 USC 9902(2). [promulgated by the Department of Health and Human Services, United States government, pursuant to the provisions of 42 USC 9902(2).]

(4) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(5) "Resources" mean cash money and other personal property or real property that an individual owns; has the right, authority or power to convert to cash; and is not legally restricted for support and maintenance.

(6) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy as defined in 907 KAR 1:011, the upper limit for resources for a family size of one (1) and for family size of two (2) shall be \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) born after September 30, 1983 who is eligible under federal poverty level guidelines.

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, [or] qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient as defined in 907 KAR 1:640, a

person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, or [and] a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011, resources shall be limited to the allowable amounts for the SSI Program.

Section 3. Resource Exclusions. (1) A homestead, occupied or abandoned, household, personal effects, and farm equipment without limitation on value shall be excluded from consideration.

(2) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration. The value of property (including the tools of a tradesperson or [and] the machinery or [and] livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of a family with a child, and which is used in a trade or business or by the individual or member of the family group as an employee shall be excluded from consideration as a resource.

(3) For a family related Medicaid case, the value of otherwise countable real property (whether income producing or nonincome producing) shall be excluded from consideration for six (6) months if the individual can demonstrate that he is trying to dispose of the property properly. An additional three (3) months shall be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) For an ABD Medicaid case, real property or nonreal property shall be excluded from consideration if it can be demonstrated that there was a reasonable effort to sell the property at fair market value within a year of application for Medicaid.

(5)(a) Except as provided in paragraph (b) of this subsection, equity of \$4,500 in an automobile shall be excluded from consideration.

(b) If an automobile is used for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(6) A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, or other identifiable fund shall be excluded from consideration.

(a) The cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(7) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(8)(a) For an ABD Medicaid case, proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(b) For a family related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(9) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(10) A payment or benefit from a federal statute, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(11) Disaster relief assistance shall be excluded from consideration.

(12) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(13) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an

available resource.

(14) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(15) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(16) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(17) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(18) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(19) An Austrian social insurance payment based on a wage credit granted under Sections [paragraphs] 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(20) An individual retirement account, Keogh plan or other tax deferred asset shall be excluded as a resource until withdrawn.

(21) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(22) A payment received from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

Section 4. Resource Exemptions. A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, September 8, 1998)

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, 1998 Ky. Acts ch. 426, sec. 4(3) [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 practitioner [practitioners] of the healing arts" means a practitioner of the healing arts who is:

(a) Licensed in accordance with KRS 311.271; or

(b) ~~[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 pursuant to 42 USC 1396n.

(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 established in 905 KAR Chapter 1 to be defined as a child:

1. a. In the custody of the state;

b. [2:] Under the supervision of the state; or

c. [3:] At risk of being in the custody of the state; and

2. a. [4:] In an institution; or

b. [5:] At risk of institutionalization; or

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

1. In an institution; or

2. At risk of institutionalization.

(2) A service covered as a targeted case management service:

(a) May include:

1. Assessment of family strengths and needs;

2. Assistance in developing, coordinating, and accessing services in the individual service plan or family support plan;

3. Coordination of interagency team meetings to develop a family support plan;

4. Facilitation of the implementation of a child and family service plan;

5. Monitoring progress and performing advocacy to assure appropriate, timely, and productive treatment and support services; or

6. Participation in the development of other human service plans for the child; and

(b) Shall not include:

1. The actual provision of a treatment;

2. An outreach activity to a potential client;

3. An administrative activity associated with a Medicaid eligibility determination or application processing;

4. Institutional discharge planning;

5. A transportation service; or

6. A duplicate payment made to another public agency or private entity for the same purpose.

(3) 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 established in 905 KAR Chapter 1 to be defined as a child:

1. a. In the custody of the state;

b. [2:] Under the supervision of the state; or

c. [3:] At risk of being in the custody of the state; and

2. a. [4:] In an institution; or

b. [5:] At risk of institutionalization; or

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

1. In an institution; or

2. At risk of institutionalization.

(4) ~~[(3)]~~ A service covered as a rehabilitative service shall be one of the following:

(a) Individual services;

(b) Group services;

(c) Collateral services;

(d) After school ~~or~~ [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 a subcontractor [their subcontractors] shall meet the 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; and

(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;

(a) For not less than five (5) years; or

(b) 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 or a representative of an agency or office listed ~~[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 a payment [payments] claimed by the provider for furnishing a service; or [services; and]

(c) Information documenting the cost of the service.

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

(3) The department may ~~[shall have the right to]~~ interview:

(a) Current or previous provider or subcontractor staff with regard to a service [services] provided pursuant to Section 3 of this administrative regulation; or [and]

(b) A recipient [Recipients] of a targeted case management or rehabilitative service [services] with regard to a service [services] received pursuant to Section 3 of this administrative regulation.

(4) Access to provider or subcontractor records relating to a

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service [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; or [and]
- (e) The Office of the Inspector General.

Section 6. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the service [services] as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health, Mental Health and Mental Retardation Services or [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 or [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 a payment [payments] made to a subcontractor [subcontractors] on an individual client per service basis.

(4) The payment rate [Payment rates] for a subcontractor-provided service shall be negotiated between the provider and the subcontractor.

(a) A negotiated rate [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 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 4, 1998

FILED WITH LRC: August 6, 1998 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

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

RELATES TO: KRS 186.276, 186.281, 186.286, Chapter 281
STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides general procedures for operation of a city or county taxicab, a city or county limousine, or a disabled persons carrier business. It further establishes ~~as it pertains to~~ information that must be filed with the cabinet or provided to the public.

Section 1. Definitions. (1) "City limousine certificate" is ~~as~~ defined in KRS 281.014.

(2) "City taxicab certificate" is ~~means-as~~ defined in KRS 281.014.

(3) "County limousine certificate" is ~~means-as~~ defined in KRS 281.014.

(4) "County taxicab certificate" is ~~means-as~~ defined in KRS 281.014.

(5) "Disabled persons certificate" is ~~means-as~~ defined in KRS 281.014.

(6) "Origin of operation" means the place at which the passenger is picked up by the taxicab, limousine, or disabled persons vehicle.

(7) "Suburban area" is ~~means-as~~ defined in KRS 281.012.

Section 2. Procedure; Sale, ~~or~~ Transfer, or Lease of Taxicab, Limousine, or Disabled Persons ~~Taxi~~ Certificate. (1) Upon the filing of an application for approval of a sale, ~~or~~ transfer or lease of a city or county taxicab, city or county limousine, or disabled persons certificate or portion of one (1) of these certificates ~~thereof~~, the cabinet shall issue notice in accordance with 601 KAR 1:030 ~~(1:070)~~.

(2) If a ~~in the event no~~ protest is ~~not~~ filed in accordance with 601 KAR 1:030, the commissioner may approve the sale, ~~and~~ transfer, or lease without a hearing. This shall be construed to include the sale, ~~or~~ transfer, or lease of the right to operate one (1) or more taxicabs, limousines, or disabled persons vehicles. ~~Should the applicant receive no notification from the cabinet prior to the date set for hearing, an appearance shall be made at the time and place set forth in the notice thereof prepared to proceed with the case.~~

Section 3. City ~~(2)~~ Taxicab and City Limousine Operations. (1) A city taxicab or city limousine certificate shall ~~All taxicab certificates will~~ be issued to allow origin of operations in ~~operate at~~ a designated town or city ~~and its suburban area. [-and all operations must be at or from such]~~

(2)(a) Each trip of the certificate holder shall originate in the designated town or city and its suburban area.

(b) The destination selected by the passenger does not have to be in the designated town or city and its suburban area.

(c) If a passenger selected a destination which was not located in the certificate holder's designated town or city and its suburban area, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated town or city and its suburban area.

(3)(a) An operator who has secured a certificate to operate in ~~at~~ a designated town or city ~~and its suburban area shall (will)~~ not be permitted to change the place of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation in ~~Operations from~~ any city or town ~~or its suburban area~~ other than designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 4. County Taxicab, County Limousine, or Disabled Persons Carrier Operations. (1) A county taxicab, county limousine, or

disabled persons certificate shall be issued to allow origin of operations any place within a designated county.

(2)(a) Each trip of the certificate holder shall originate in the designated county.

(b) The destination selected by the passenger does not have to be in the designated county.

(c) If a passenger selected a destination which was not located in the certificate holder's designated county, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated county.

(3)(a) An operator who has secured a certificate to operate in a designated county shall not be permitted to change the county of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation from any county not designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 5. ~~(3)~~ List of Drivers. (1) Each taxicab, limousine, or disabled persons certificate holder ~~All taxicab operators~~ shall maintain a complete list of the ~~taxi~~ drivers employed by the certificate holder ~~such operator~~.

(2) This list shall be on file at the office or cab stand of the ~~such~~ operator, and will be available for inspection ~~by anyone~~ at any time.

(3) This list shall contain the name, address, age, and the operator's license ~~and driver or chauffeur's badge~~ number of each driver. Any change in ~~and all changes of~~ drivers shall be promptly noted on the ~~said~~ list.

(4) Each certificate holder, prior to hiring a new driver, shall:

(a) Ensure that the driver has a valid operator's license; and

(b) Obtain and review the driving history record of the driver.

(5) Annually, the certificate holder shall obtain and evaluate an updated copy of the driving history record of each of his drivers.

Section 6. ~~(4)~~ Decrease in Number of Taxicabs, Limousines, or Disabled Persons Vehicles ~~Cabs~~ Operated. (1) If a ~~Whenever any~~ taxicab, limousine, or disabled persons certificate holder has decreased ~~operator desires to decrease~~ the number of taxicabs, limousines, or disabled persons vehicles ~~cabs~~ which he has ~~authorized by his certificate of operation (in operation, he may do so)~~ by notifying the cabinet and surrendering the ~~identification~~ tag ~~or tags~~ issued to the taxicab, limousine, or disabled persons vehicle ~~such cab or cabs~~ by the Division of Motor Carriers, the certificate holder ~~may (cabinet. The certificate holder may (Should any taxicab operator, at any time during the same year) [-desire to] replace in operation the taxicab, limousine, or disabled persons vehicle (any cab-so) dropped,~~

(2) He shall do so ~~[-he must do so]~~ by notifying the cabinet and procuring the proper tag ~~or tags~~.

(3) If a taxicab, limousine, or disabled persons vehicle which was dropped from service pursuant to subsection (1) of this section is not properly replaced in operation by June 30, 1999, the dropping of the taxicab, limousine, or disabled persons vehicle shall constitute a permanent forfeiture of the authority to operate the taxicab, limousine, or disabled persons vehicle and the certificate of authority shall be reissued to reflect the reduction in the number of authorized vehicles.

(4) To request restoration of the use of the forfeited taxicab, limousine, or disabled persons vehicle, the certificate holder shall file a new application pursuant to KRS 281.620.

(5)(a) Effective July 1, 1999, if a taxicab, limousine, or disabled persons vehicle authorized by the certificate needs to be repaired or replaced, the certificate holder may request an escrow of the vehicle for a period not to exceed ninety (90) days.

(b) The written request to the Transportation Cabinet to escrow the vehicle shall be accompanied by the vehicle identification tag issued to the certificate holder by the Division of Motor Carriers and a detailing of the reason for the need for the escrow.

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(c) If, after ninety (90) days, the certificate holder has not placed the vehicle back in service by retrieving the tag from the Transportation Cabinet, he shall have permanently forfeited the authority to operate that taxicab, limousine, or disabled persons vehicle and the certificate of authority shall be reissued to reflect the reduction in the number of authorized vehicles.

(d) If, before the end of the ninety (90) days, the certificate holder discovers that additional time is needed to repair or replace the escrowed vehicle, he may request from the Commissioner of the Department of Vehicle Regulation, one (1) additional ninety (90) day escrow period.

(e) The commissioner may allow the one (1) additional ninety (90) day escrow period, if the certificate holder provides sufficient proof that the delay is unavoidable and if the certificate holder has not exhibited a pattern of abuse of the escrow period. [If the cabs which are dropped are not properly replaced in operation within three (3) years of the next renewal date of the taxicab certificate, such cabs so dropped and not replaced will constitute a forfeiture of such cabs, and an application will be necessary before the replacement of such cabs will be authorized.]

Section 7. [5:] Trip Records. (1) A taxicab, limousine, or disabled persons certificate holder [All taxicab operators certificated to operate one (1) or more taxicabs from a city of the first or second class within the Commonwealth or operating into such a city in intrastate commerce with a point of origin or destination outside this state,] shall maintain an accurate record of the origin, destination, driver, vehicle, and date of each trip [all trips] made by each of its licensed taxicabs, limousines, or disabled persons vehicles.

(2) These records may be the daily log reports kept by the drivers.

(3) These origin and destination reports shall be kept by the certificate holder [operator] for at least one (1) year and shall be available for inspection by the Transportation Cabinet, other state government agency, or a law enforcement agency.

Section 8. Taxicab, Limousine, and Disabled Persons Vehicle Identification Cards.

(1) An application or renewal application for a Kentucky taxicab, limousine, or disabled persons vehicle identification card and plate shall be made on form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year _____" for each vehicle to be operated as a taxicab, limousine, or disabled persons vehicle.

(2) If the vehicle is leased, the Kentucky license plate number and name of the lessor shall also be provided.

(3) Each taxicab, limousine, or disabled persons vehicle identification card and plate shall be renewed annually pursuant to KRS 186.281.

(4) A certificate holder who needs to transfer an identification plate from the motor vehicle for which it was issued to another shall complete and file with the Division of Motor Carriers, form TC 95-37, "Affidavit". The following information shall be sent with the completed form TC 95-37:

(a) A copy of the vehicle registration or title on the new motor vehicle needed to be placed in operation;

(b) Proof that the new vehicle has been added to the liability insurance policy of the certificate holder;

(c) The original fee receipt card issued with the identification plate. If the original is not available, a sworn statement shall be attached explaining why the fee receipt card is not available; and

(d) If the new vehicle is not registered to the certificate holder, a completed form TC 95-15, "Equipment Lease Agreement."

Section 9. Material Incorporated by Reference. (1) The following material is incorporated by reference [as a part of this administrative regulation]:

(a) Form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year _____" as revised by the Transportation Cabinet in January 1995;

(b) Form TC 95-37, "Affidavit" as revised by the Transportation Cabinet in September 1996; and

(c) Form TC 95-15, "Equipment Lease Agreement" as revised by the Transportation Cabinet in 1988.

(2) This material [The material incorporated by reference in this

administrative regulation] may be viewed, copied, or obtained from the Division of Motor Carriers, P.O. Box 2007, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. through 4:30 p.m. [The telephone number of the division is (502) 564-4540. The hours of operation of the division are 8 a.m. through 4:30 p.m., weekdays, local prevailing time.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: September 4, 1998

FILED WITH LRC: September 8, 1998

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are approximately 550 holders of a taxicab certificate of public convenience and necessity; 100 holders of limousine certificates, and 175 holders of certificates to operate disabled persons motor carriers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation should have no impact on the cost of living or employment anywhere in the Commonwealth of Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation will require each certificate holder to purchase a \$3 driving history record on each of their drivers. Some escrowed certificates will be reactivated and others will be forfeited.

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

1. First year following implementation: Two of the changes in this administrative regulation will require additional compliance, reporting or paperwork requirements. The first is that all certificate holders will have to check the driving history record of each of their drivers. The second is that any motor vehicles which have been placed in escrow will have to be reactivated or removed from their certificate.

2. Second and subsequent years: The certificate holder will have to obtain and evaluate a copy of the driving history record for each of his drivers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Transportation Cabinet will have to reissue certificates to each certificate holder who chooses to not reactivate his escrowed motor vehicles.

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: The road fund as appropriated to the Department of Vehicle Regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will have no economic impact in Kentucky

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: In addition to questioning the Transportation Cabinet's authority to allow vehicles being operated pursuant to a certificate of public convenience and necessity to be escrowed; the administrative regulation the testimony at the public hearing indicated that the escrow program is currently being used to keep competitors out of market area. To keep the confusion as low as possible, the cabinet decided to allow a delayed date of June 30, 1999 by

which all escrowed motor vehicles must be reactivated or forfeited. Another item discussed was related to safety. The decision was made not to require a safety inspection for these motor vehicles at this time, since the majority of them will be inspected under the provisions of 603 KAR 7:080, Human Services Transportation. However, it did not seem to be an unreasonable burden to require each certificate holder to annually review and evaluate the driving history record of each of the drivers. This will allow a certificate holder to set higher driver standards which should have a positive impact on public safety.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring certificate holders to annually review and evaluate the driving history record of each of their drivers should add to the safety of the motoring 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: Certificate holders would have no requirement to examine the driving history records of its drivers and would likely hire or retain unqualified or unsafe drivers.

(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: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Each certificate holder is required to provide the same information to the Transportation Cabinet and to perform the same type of safety checks. However, smaller operators will have much less paperwork to do than the larger operators.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

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

RELATES TO: KRS 138.450 through 138.470, 154.690, 186.281, 281.626, 1998 Ky. Acts ch. 166 [Chapters 138, 154, 186, 281]
STATUTORY AUTHORITY: KRS 138.463, 186.281, 1998 Ky. Acts ch. 166 [186.005, 281.600]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.463 requires the Transportation Cabinet [has the authority and responsibility] to assess and collect the monthly U-drive-it usage tax. KRS 186.281(3) requires the holder of a U-drive-it permit to pay a fifteen (15) dollar annual seat tax for each U-drive-it passenger car. In this administrative regulation the cabinet establishes the procedure for submitting information on each motor vehicle in the program [obtaining a vehicle identification document] and for reporting and paying of the monthly usage tax and the annual seat tax.

Section 1. (1) A U-drive-it motor carrier who has been issued a permit pursuant to 601 KAR 1:140 shall provide information to the Transportation Cabinet identifying each motor vehicle to be operated under the provisions of the U-drive-it permit.

(2) Notification to the Transportation Cabinet with the vehicle identification information for a motor vehicle which is to be:

(a) Rented or leased shall be made on Transportation Cabinet form TC 95-53, "Application for U-drive-it Registration."

(b) Loaned as allowed in 1998 Ky. Acts ch. 166, Section 1 shall be made on Transportation Cabinet form TC 95-53-L, "Application for U-drive-it Registration Loaner."

(3) The U-drive-it permit holder on this application shall agree to pay the seat tax imposed by KRS 186.281(3) with the first month's usage tax on the motor vehicle pursuant to KRS 138.463.

(4) The vehicle identification information shall be submitted annually prior to the expiration of the motor vehicle's registration li-

cense plate.

(5) The first time a U-drive-it permit holder applies for a vehicle registration for a particular motor vehicle, he shall attach a copy of one (1) of the following to either the "Application for U-drive-it Registration" or the "Application for U-drive-it Registration Loaner":

(a) The front and back of the manufacturer's certificate of origin; or

(b) The motor vehicle title.

(6) The U-drive-it permit holder shall submit the application form to the Department of Vehicle Regulation, Division of Motor Carriers. [Payment of all applicable seat taxes imposed by KRS 186.281 shall be due and payable to the department at the time of application for the vehicle identification document (fee receipt card). Seat taxes shall be applicable to cargo-carrying vehicles operated in Kentucky to the extent of the normal passenger-carrying capacity of the vehicle. At the time a U-drive-it permit holder pays to the department the annual seat tax imposed by KRS 186.281 he shall apply for a vehicle identification document for each vehicle to be operated under the U-drive-it permit in Kentucky. The application for a vehicle identification document shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, on forms prescribed and furnished by the department. The application shall be accompanied by a vehicle equipment list which identifies each vehicle. For each vehicle listed for the first time on an equipment list, the applicant shall provide a copy of both front and back of either the manufacturer's certificate of origin, title or the registration of the vehicle. The vehicle identification document (fee receipt card) shall be renewed annually prior to the expiration of the vehicle's registration license plate.]

Section 2. (1) A vehicle shall not be used as a loaner vehicle or shall not [No vehicle may] be operated under a U-drive-it permit until the permit holder has:

(a) Agreed to pay [paid] the applicable seat tax imposed by KRS 186.281(3); and

(b) Supplied the [obtained a] vehicle registration information [identification document] for the vehicle.

(2) If [When] a vehicle ceases to be used as a loaner vehicle or operated under a U-drive-it permit, the permit holder shall apply to the jurisdictional county clerk for an amended registration form for the motor vehicle [advise the department in writing] within fifteen (15) days. [The notice shall include a complete description of the vehicle including its identification number.]

Section 3. (1) A [A photocopy of the vehicle identification document (fee receipt card) shall at all times, be carried in the vehicle for which it was issued and shall be subject to inspection by any proper representative of the Transportation Cabinet or other law enforcement agency. A copy of the vehicle identification document shall be presented to the county clerk upon the initial registration of any vehicle being registered under a U-drive-it permit. The vehicle identification document shall be used to assess the usage tax imposed by KRS Chapter 138.

Section 4. Any holder of a U-drive-it permit who reports and pays the tax imposed by KRS 138.463 shall report the tax on a monthly basis on Transportation Cabinet form TC 95-9, "Kentucky U-drive-it Monthly Usage Tax Return", or through an electronic equivalent of the form which has been preapproved by the Transportation Cabinet.

(2) The monthly tax report shall include the following for each motor vehicle identified as part of the program:

(a) The total amount of the lease or rental agreements for the month being reported;

(b) The amount of usage tax owed pursuant to KRS 138.463 for the month being reported; and

(c) On the first submittal for that registration period, the seat tax owed pursuant to KRS 186.281 for the entire registration period.

(3) The tax report and tax payment [the forms prescribed and furnished by the department. Tax reports and payments] shall be due on or before the end of the succeeding month following the period covered by the tax report.

(4)(a) The tax reported and paid to the cabinet for any rented or leased vehicle shall not be less than the equivalent to the amount due on the fair market value of a vehicle of like kind as set forth in 601

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KAR 1:146, regardless of the terms of the rental or lease agreement.

(b) [However,] The tax reported and paid to the cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement.

(5)(a) A motor vehicle dealer shall report and pay to the Transportation Cabinet the usage tax on a loaner vehicle as if it were a leased motor vehicle.

(b) the fair market lease amount shall be established pursuant to 601 KAR 1:146, Section 4, if applicable to the dealer or Section 5 if Section 4 is not applicable to the dealer. [The tax reported and paid to the cabinet for a loaner vehicle shall be the same as the lease amount for the same vehicle as set forth in 601 KAR 1:146.]

~~Section 4. (1) A [5-] The U-drive-it permit holder who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make his election at the time of his application for his vehicle identification document (fee receipt card). No change in the method of payment of the usage tax shall be permitted during his term of ownership of the vehicle.~~

~~Section 5. Any] holder of a U-drive-it permit with vehicles registered pursuant to an approved fleet registration allocation shall report and pay to the department the monthly usage tax at the rate imposed by KRS 138.463 on all vehicles rented from all its Kentucky locations regardless of the state of licensing of those vehicles.~~

~~(2) The U-drive it permit holder shall also license in Kentucky, pay the applicable seat tax imposed by KRS 186.281, and identify on Transportation Cabinet form TC 95-53 [obtain a vehicle identification document (fee receipt card) for] the number of vehicles at least equal to the number of vehicles to be registered in Kentucky by the approved allocation formula. [Tax payments not timely made shall be subject to penalties and interest.]~~

~~Section 5. (1) A [7-Any] U-drive-it permit holder who under the terms of KRS 154.690 claims exemption from the payment of usage taxes shall file annually with the Department of Vehicle Regulation a copy of his certificate from the Enterprise Zone Authority of Kentucky.~~

~~(2) If a U-drive-it permit holder obtains an exemption under KRS 154.690 at any time after his initial application for a U-drive-it permit, he shall [be required to] file a copy of the certification with the department prior to claiming the exemption from the payment of the usage tax.~~

~~(3)(a) If a [any] U-drive-it permit holder ceases to be certified under KRS 154.690, [then] he shall immediately [so] notify the department in writing.~~

~~(b) A [Any] U-drive-it permit holder who loses his certificate under KRS 154.690 and who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make this election at the time he notifies the department of his loss of certification.~~

~~Section 6. [8-] If a vehicle on which the usage tax is being paid pursuant to KRS 138.463 is transferred to another party under the conditions set forth in KRS 138.463(9)(e) [within 180 days of its registration and if less than 5,000 miles have been placed on the vehicle during its registration as a U-drive-it vehicle, then the new owner is required to pay the usage tax imposed by KRS 138.460 based on the taxable value of the vehicle as required by KRS 138.450(4)(e). In such a case], the U-drive-it permit holder shall not claim credit for any usage tax remitted for the vehicle.~~

~~Section 7. (1) A motor vehicle dealer paying the usage tax on a loaner vehicle pursuant to 1998 Ky. Acts ch. 166, Section 1 shall:~~

~~(a) Be subject to the audit provisions of 601 KAR 1:146;~~

~~(b) Maintain a log for each vehicle registered under that loaner permit number which includes the following:~~

~~1. Beginning and ending loan dates;~~

~~2. Customer name;~~

~~3. Beginning and ending odometer reading for each loan; and~~

~~4. Reference number to the repair authorization document on the customer's motor vehicle; and~~

~~5. Retain the repair authorization document associated with each loan.~~

~~(2) The log required in subsection (1)(b) of this section may be replaced with prenumbered loan agreement forms which contain the information required in that paragraph.~~

~~(3) The log, repair authorization document, and prenumbered loan agreement forms shall be retained for six (6) years.~~

~~Section 8. (1) The following material is incorporated by reference in this administrative regulation:~~

~~(a) Transportation Cabinet form TC 95-53, "Application for U-drive-it Registration", July 1998 edition;~~

~~(b) Transportation Cabinet form TC 95-20, "Kentucky U-drive-it Monthly Usage Tax Return", July 1998 edition; and~~

~~(c) Transportation Cabinet form TC 95-53-L, "Application for U-drive-it Registration Loaner", July 1998 edition.~~

~~(2) The material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4540. The hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. [9- Tax records, and records of the payment thereof, shall be maintained by U-drive-it permit holders for a period as set forth in KRS 138.463(6), and shall be subject to audit or examination by proper representatives of the Transportation Cabinet.]~~

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 8, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are currently 510 U-drive-it permit holders. Under the provisions of HB 656, 601 KAR 1:140 and this administrative regulation an additional 200 permits will likely be issued for the motor vehicle dealers wishing to participate in the loaner usage tax payment program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no effect on the cost of living or employment anywhere in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no effect on the cost of doing business as a result of this administrative regulation. However, HB 656 does provide a slight tax break to the motor vehicle dealers who participate in the loaner program.

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

1. First year following implementation: All U-drive-it permit holders are required to identify the motor vehicles being operated as rental or lease motor vehicles. The motor vehicle dealers applying to pay their usage tax pursuant to the provisions of HB 656 will have to separately identify their loaner vehicles. Therefore, approximately 125 of the permit holders will be required to complete 2 identification forms each year. However, participating in the loaner vehicle program is voluntary and therefore only the dealers who wish to participate are required to complete the application forms. Participation in the loaner program established by HB 656 should save the dealers money by allowing them to pay the usage tax on loaner vehicles at the lowest rate possible.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings

1. First year: With more vehicles in the various portions of the U-drive-it program, the administrative cost of the Transportation Cabinet will increase.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: With more permit holders, pursuant to 601 KAR 1:146, there will be more audits necessary.

(4) Assessment of anticipated effect on state and local revenues: Assuming that all the motor vehicle dealers are paying the full amount of usage tax owed on their loaner vehicles, with the tax break in HB 656, there should be a slight decrease in road fund revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The road fund as appropriated to the Department of Vehicle Regulation and Financial Administration.

(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 administrative regulation will have no economic impact in Kentucky. However, HB 656 is providing a slight tax break to the motor dealers who provide FREE OF CHARGE a loaner for their service or repair customers. Since the vehicles are earning the motor vehicle dealers nothing, but the vehicles are still being used on the highway, the General Assembly established this lower usage tax payment form for the loaner vehicles.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet seriously considered not issuing a separate U-drive-it permit to the motor vehicle dealers who already have a U-drive-it permit. Under this scenario, the loaner vehicles would have been mixed with the vehicles that the dealer is either renting or leasing. Because the tax reporting form requires the dealer to report the revenue generated by the renting or leasing of a vehicle in the U-drive-it Program, mixing the loaner vehicles which generate no revenue, would have skewed the tax reports. A skewed tax report immediately signals to the Transportation Cabinet the need for an audit of the company. In addition, most reprogramming of the computer system used in the U-drive-it Program have been put on hold since a new program is being developed. Therefore, at least until the new computer program is ready, the cabinet found it easier to create a separate permit for each motor vehicle dealer participating in the loaner program rather than attempting to administer the program manually.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: 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:

(11) TIERING: Is tiering applied? No. Tiering was not applied since all U-drive-it permit holders, regardless of the mechanism being used to pay the usage tax pursuant to KRS 138.463, must identify the vehicles and report the usage tax owed.

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 motor vehicle registration office of the county clerk.

3. State the aspect or service of local government to which this administrative regulation relates. As an agent for the Transportation Cabinet, the county clerks register and title the motor vehicles based in Kentucky. This service is affected by this administrative regulation.

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 (+/-):

Expenditures (+/-):

Other Explanation: There will be additional time required for the motor vehicle personnel in the office of each county clerk in order to learn to distinguish between rental U-drive-it motor vehicles and loaner motor vehicles.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Department of Fiscal Management Division of Audit Review (Amended After Hearing)

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 186.020, 186.050, 186.051, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 186.050(13), 186.051(3), 49 USC 31704

NECESSITY, FUNCTION, AND CONFORMITY: 49 USC 31704 [Chapter 317] requires each state to participate in the International Registration Plan. KRS 186.051(3) requires the Transportation Cabinet to establish a system of staggered registration time periods for commercial motor vehicles. KRS 186.050(13) requires the Transportation Cabinet to promulgate administrative regulations concerning the registration of commercial motor vehicles under the Articles of the International Registration Plan. This administrative regulation establishes [sets forth] the procedures to be followed in registering a commercial motor vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050. The administrative regulation establishes [provides for] the recordkeeping standards required for apportionable vehicles, auditing of the records by the Transportation Cabinet, and the appeal procedure when a disagreement occurs. There are no requirements in this administrative regulation which are more stringent than the federal mandate.

Section 1. Definitions. (1) "Apportionable vehicle" means any vehicle except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties and government owned vehicles, used or intended for use in two (2) or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property; and

(a) Is a power unit having a gross weight or registered gross weight in excess of 26,000 pounds; or

(b) Is a power unit having three (3) or more axles, regardless of weight; or

(c) Is used in combination and the weight of the combination exceeds 26,000 pounds gross vehicle weight.

(2) "Base jurisdiction" means the state where:

(a) The registrant has an established place of business;

(b) Mileage is accrued by the registrant's fleet; and

(c) Operational records of the fleet are maintained or can be made available for audit.

(3) "Established place of business" means a physical structure:

(a) Owned, leased, or rented by the fleet registrant;

(b) Designated by a street number or road location;

(c) Open during normal business hours;

(d) In which is located:

1. A telephone publicly listed in the name of the registrant;

2. A person conducting the fleet registrant's business; and

3. The operational records of the fleet or where the records are made available for audit.

(4) "Fleet" means one (1) or more apportionable vehicles;

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(5) "International registration plan" or "IRP" means the interstate agreement on apportioning vehicle registration fees paid by motor carriers which was developed by the American Association of Motor Vehicle Administrators.

(6) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a state, province, or territory of a country.

(7) "Operational records" means source documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets, and logs.

Section 2. Governing Material. (1) The "International Registration Plan, With Official Commentary" [~~effective January 15, 1998~~ ~~February 14, 1997~~] and issued by the International Registration Plan, Inc. shall govern Kentucky's participation in IRP.

(2) The "Uniform Operation Audit Procedure Guidelines" [~~effective March 1, 1993~~ and] issued by the Audit Committee of the International Registration Plan, Inc. shall govern:

(a) The recordkeeping requirements of registrants; and

(b) The Kentucky Transportation Cabinet's audit responsibilities under the IRP.

(3) The "Kentucky IRP, Apportioned Registration Instruction Manual" issued by the Transportation Cabinet shall be followed by an operator or owner of an apportionable vehicle whose base jurisdiction is Kentucky. [~~The "Kentucky [1997] International Registration Plan, IRP, [Apportioned Registration] Policies and Procedures [Instructional] Manual" effective January 1, 1998 [1997] and issued by the Transportation Cabinet shall be followed by all operators or owners of apportionable vehicles whose base jurisdiction is Kentucky.~~]

(4) The "International Registration Plan Policies and Procedures Manual" [~~effective April 1994~~] shall be followed by the Kentucky Transportation Cabinet in administering the apportioned registration program.

Section 3. Application for Apportioned Registration. (1) The operator of an apportionable vehicle who operates in more than one (1) licensing jurisdiction shall apply for apportioned registration of his fleet in those jurisdictions in which he operates and which are members of the International Registration Plan unless he purchases a trip permit from a jurisdiction for each trip into the jurisdiction.

(2) A vehicle, or combination of power unit and trailer [~~Vehicles, or combinations of power unit and trailers;~~] having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant.

(3) If Kentucky is the base jurisdiction for an operator of an apportionable vehicle, he shall apply for his apportioned registration in Kentucky.

Section 4. Apportioned Mileage Reporting and Recordkeeping. (1)(a) The fleet miles required to be reported on the application for apportioned registration shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year.

(b) The mileage shall be distributed by jurisdiction. For each jurisdiction, whether or not a member of the International Registration Plan, all miles traveled in that jurisdiction by any apportioned power unit, whether the vehicle is empty or loaded, shall be reported.

(c) The mileage to be reported for any motor vehicle power unit which was added to or deleted from the apportioned fleet during the mileage reporting period shall be only those miles generated while it was part of the apportioned fleet.

(d) Mileage shall include the following:

1. Loaded and unladen trips;
2. Intrastate and interstate trips; and
3. Miles operated under trip permits.

(2)(a) An apportioned registrant [~~Apportioned registrants~~] shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year.

(b) The information shall be retained in an individual vehicle mileage record.

(c) The individual vehicle mileage record shall contain at a minimum the following information:

1. [(a)] Registrant's name and fleet number;

2. [(b)] Beginning and ending date of trip;

3. [(c)] Trip origin and destination;

4. [(d)] Route of travel for trip;

5. [(e)] Beginning and ending odometer or hubometer reading of each trip;

6. [(f)] Total trip miles and mileage;

7. [(g)] Mileage by jurisdiction for each trip;

8. [(h)] Vehicle unit number and vehicle identification number; and

9. [(i)] Driver's name or signature.

Section 5. Proof of Insurance and Certificate of Apportioned Registration. (1) The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet and any other vehicle to be apportioned registered.

(2) The county clerk's fee for the issuance of the certificate shall be two (2) dollars for each vehicle.

(3) The applicant shall submit proof of insurance to the county clerk at the time he applies for the certificate of apportioned registration.

Section 6. Registration Fees. (1)(a) The applicant shall submit the application for apportioned registration to the Department of Vehicle Regulation for approval. This submission may either be in person or by mail.

(b) Original [~~and renewal~~] application shall be made on Transportation Cabinet forms:

1. TC 95-1, Kentucky Trucking Application;

2. TC 95-303, Schedule A, IRP Apportioned Registration; and

3. TC 95-303, Schedule B, Kentucky IRP Apportioned Registration Application.

(c) Renewal application shall be made on Transportation Cabinet forms:

1. TC 95-303, Schedule A, IRP Apportioned Registration; and

2. TC 95-303, Schedule B, Kentucky IRP Apportioned Registration Application. [~~form TC 96-301, IRP Apportioned Registration, effective October 1995.~~]

(d) [(e)] After the Department of Vehicle Regulation has approved an application, the department shall compute the apportioned registration fee due each jurisdiction under the International Registration Plan.

(e) [(d)] The applicant shall be given a bill for registration in all jurisdictions which do not bill the applicant directly.

(f) [(e)] The applicant shall return to the department, either in person or by mail, the bill and a certified check, cashier's check, personal check, business check, or money order made payable to the Kentucky State Treasurer.

(g) [(f)] If the applicant is required to post a bond pursuant to 601 KAR 1:200 or has had a personal or business check returned for insufficient funds to the Transportation Cabinet by the applicant's bank, the Transportation Cabinet may require the applicant to make payment by cash, certified check, money order, or cashier's check.

(2) The required tax and fee shall be accompanied by proof of payment of the federal heavy vehicle use tax in accordance with the provisions of 601 KAR 9:115.

(3)(a) The Department of Vehicle Regulation shall issue an IRP apportioned license plate, and IRP cab card to the registrant for each vehicle registered under the provisions of the International Registration Plan.

(b) The originally issued IRP license plate shall have decals, indicating the expiration month and year.

(c) After renewal each year, the registrant shall be issued a new decal designating the year of expiration and a new IRP cab card.

(d) The IRP cab card shall list those jurisdictions to which the registrant has apportioned his registration fees and any other information required by the International Registration Plan.

(e) The original IRP cab card shall be carried in the cab of the vehicle at all times.

Section 7. Supplemental Applications. (1) If an applicant need to add to or delete vehicles from its fleet, the department shall be notified on a supplemental application form TC 95 [96]-303, Schedule C, "Kentucky IRP Apportioned Registration Supplemental Application" [~~"Supplemental Kentucky Application for IRP Apportioned Registration" effective January 1998~~] [October 1995]. This form shall be

used to provide notice of the following:

- (a) A vehicle addition;
- (b) A vehicle deletion;
- (c) A vehicle transfer; or
- (d) A gross weight increase.

(2)(a) A vehicle deletion notice shall be accompanied by the apportioned registration plate and the certificate of apportioned registration.

(b) The registrant may, at the end of the registration month, apply for a refund of the taxes which apply to the unexpired months of the registration year.

(3)(a) If a vehicle is being added by a registrant at the same time he is deleting another vehicle with the same weight within the fleet, the Kentucky registration tax may be transferred from the deleted to the added vehicle.

(b) The Kentucky transfer fee shall be two (2) dollars.

(c) The registrant shall be notified of the transfer fee owed to other jurisdictions.

(4) If the declared gross weight of the vehicle is to be increased, the increased tax owed shall be prorated from the date the increased weight is allowed.

Section 8. Adding Jurisdictions to IRP Registrations. (1) If the operation of a registrant is being expanded to include an additional jurisdiction which participates in the International Registration Plan, the registrant may amend his mileage schedule TC 95-303, Schedule B, Kentucky IRP Apportioned Registration Application, to reflect an estimate of miles to be operated in the new jurisdiction.

(2) The mileage percentages for an added jurisdiction shall be computed as added on to the actual mileages earlier reported.

(3) Percentages approved on the original application shall not be changed during the registration year.

(4)(a) If an additional jurisdiction is added during the registration year, all vehicles in the fleet shall be changed to reflect operation in the additional jurisdiction.

(b) The Department of Vehicle Regulation shall send replacement IRP cab cards to the registrant.

(c) Upon receipt of the new cab cards the registrant shall return the outdated IRP cab cards to the department.

Section 9. Conversion to Apportioned Registration. (1) If a vehicle is registered in Kentucky as a commercial or limited activity vehicle and the registrant intends to convert to an apportioned registration, the registrant shall first purchase an apportioned registration from the appropriate county clerk.

(2) The current commercial or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration.

(3)(a) The applicant shall be given credit for the remainder of the value of his current Kentucky registration.

(b) This credit shall be applied toward taxes or fees due other IRP jurisdictions and collected by Kentucky on the apportioned registration.

(4) All taxes and fees due other jurisdictions and any additional taxes or fee due to Kentucky shall be paid in accordance with Section 6 [5] of this administrative regulation before the apportioned credentials may be issued.

Section 10. Replacement of Credentials. (1) If the owner of a vehicle registered pursuant to KRS 186.050(13) loses his copy of a certificate of apportioned registration, he may obtain a duplicate from the Department of Vehicle Regulation by:

(a) Filing an affidavit upon form TC 96-167, "Affidavit for Replacement County/Affidavit for Nonexchange - County" furnished by the department; and

(b) Paying to the department a fee of three (3) [two-(2)] dollars.

(2)(a) If the owner loses a registration plate issued him under the provisions of KRS 186.050(13), he shall report the plate as lost or stolen to his area state police post or local law enforcement agency.

(b) The enforcement agency shall report the loss in the nationwide computer system for the information of all enforcement agencies.

(3) The owner of a lost registration plate shall file with the Department of Regulation the following:

(a) A form TC 96-167;

(b) An affidavit for replacement;

(c) His certificate of apportioned registration; and

(d) A three (3) dollar fee.

(4)(a) The Department of Vehicle Regulation after review and acceptance of the completed forms shall issue the owner another certificate of apportioned registration and a plate which shall bear a different number from that of the lost plate.

(b) The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.

(5) The department shall forthwith cancel the registration corresponding to the number of the lost plate, and the cancellation shall be reported by the department to the Commissioner of the Department of State Police.

(6) A [Any] person finding a lost registration plate shall deliver it to the Department of Vehicle Regulation or to a a [any] county clerk for forwarding it to the department.

Section 11. Apportioned Registration of Leased Vehicles. Apportioned registration of a leased vehicle [leased-vehicles] may be accomplished in one (1) of the following ways:

(1) The owner/lessor may be the registrant and the vehicle may be registered in the name of the owner/lessor. The allocation of registration fees shall be based on the operational records of the owner/lessor. The apportioned license plate and IRP cab card shall be the property of the lessor; or

(2) The leasee may be the registrant and the vehicle may be registered by the lessee in both the owner/lessor's name and that of the leasee. The allocation of registration fees shall be based on the operational records of the lessee. The apportioned license plate and IRP cab card shall be the property of the lessee.

Section 12. Apportioned Registration of Trailers. (1) Under the International Registration Plan, trailers, semitrailers, and auxiliary axles are not required to be apportioned registered. However, a member jurisdiction may file an exception to the IRP. Kentucky registrants are [only] required to pay trailer registration taxes and fees to Kentucky and to those member jurisdictions which have filed an exception.

(2) Kentucky trailer credentials shall be obtained through the appropriate county clerk.

(3) If a Kentucky trailer registration is purchased, the registrant shall submit to the Department of Vehicle Regulation a list of all trailers apportioned registered.

(4) The fee for each IRP trailer cab card shall be two (2) dollars.

(5) After receiving the list of trailers and appropriate tax and fee, the department shall send the registrant the IRP cab cards.

(6) In order to receive the IRP cab card by the beginning date of the registrant's assigned registration year, the registrant shall submit the list at least one (1) month in advance of the beginning date.

Section 13. Registration Equivalent. (1) Registration of a motor vehicle under the provisions of KRS 186.050(13) and this administrative regulation shall be equivalent to registration of the motor vehicle under the provisions of KRS 186.050(3).

(2) A privilege [All-privileges] afforded a motor vehicle in Kentucky when operating on KRS 186.050(3) registration shall be afforded a motor vehicle in Kentucky when operating on KRS 186.050(13) registration.

Section 14. Audit of Apportioned Registrants. (1) In accordance with the provisions of the International Registration Plan, the Transportation Cabinet, Division of Audit Review shall every five (5) years audit fifteen (15) percent of the apportioned registrants based in Kentucky.

(2) An audit shall be performed in accordance with the "Uniform Operational Audit Procedure Guidelines".

(3) The Division of Audit Review shall in writing notify the apportioned registrant of the date, time, and location of the audit. At least thirty (30) days' advance notice shall be given to the registrant.

(4) Failure of the registrant to make available records required to be kept by the registrant pursuant to Section 4 of this administrative regulation and requested for the audit may result in a penalty assessment of up to 100 percent of Kentucky's registration fees set forth in KRS 186.050 in addition to fees for all other apportioned jurisdictions

included in the original application or cancellation of apportioned registration.

(5) If it is determined that the registrant's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the registrant shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(6)(a) If the audit is being conducted on site, the auditor shall conduct and document a preaudit conference with the registrant outlining the following:

1. Operation;
2. Audit procedures;
3. Records to be examined;
4. Sample period; and
5. Sampling procedures.

(b) The motor carrier and auditor shall determine at the preaudit conference who:

1. Has the responsibility for the final acceptance of audit findings; and
2. [who] Should be involved in the close-out conference.

(7) If the audit is being conducted on site, the auditor shall conduct and document a close-out conference with the registrant outlining preliminary findings to include the following:

- (a) Applicable penalty and interest;
- (b) Recommendations;
- (c) Rights of appeal; and
- (d) To whom the audit report should be addressed.

(8)(a) The Transportation Cabinet shall furnish the registrant a letter of audit findings and recap schedules.

(b) If requested, the cabinet shall supply any other work papers to the registrant.

(9) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(10) The registrant shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Audit Review.

Section 15. Protest or Appeal of Audit Results. (1) The registrant may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review any portion of the audit.

(2) If the registrant does not protest, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th day.

(3)(a) If a registrant protests pursuant to this section, the protest shall include a supporting statement and documents which:

1. Identify the specific adjustments requested; or
2. The portions of the audit being protested; and
3. Set [setting] forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the registrant shall be notified of the adjustments [change] to the [and the amended] audit or [amended-audit supplemental] tax statement [shall become final].

(c)1. If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the registrant in its protest, the registrant shall be notified to attend an information-gathering and protest [gathering/protest] conference with the Division of Audit Review.

2. The information-gathering and protest [gathering/protest] conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest.

3. It may be rescheduled twice [only one (1) time] by either party.

(d) Within twenty (20) days of the information-gathering and [] protest conference the Transportation Cabinet shall issue the final ruling [audit or final-audit-supplemental-tax-statement].

(4) If the registrant desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement or the Transportation Cabinet's final ruling appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 16. Protest or Appeal of Nonaudit IRP Issue. (1) If anyone is aggrieved by any action or decision of the Transportation Cabinet made pursuant to the provisions of this administrative regulation except the audit provisions established [set-forth] in Sections 14 and 15 of this administrative regulation, within ten (10) days of the decision, may protest to the Transportation Cabinet, Division of Motor Carriers [Vehicle Licensing].

(2)(a) If a protest is made pursuant to this section, the protest shall include a supporting statement and documents which identify the specific adjustments requested or the action of the Transportation Cabinet being protested, and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change its action or decision, the protestant shall be notified of the change.

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change its action or decision as requested by the protestant, the protestant shall be notified to attend an information-gathering and [] protest conference with the Division of Motor Carriers [Vehicle Licensing]. The information-gathering and [] protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled [only] one (1) time by either party.

(d) Within twenty (20) days of the information-gathering and [] protest conference the Transportation Cabinet shall issue a final decision.

(3)(a) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to this administrative regulation shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(b) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(4) If a protestant desires, he may, within thirty (30) days of the date of the final decision of the Transportation Cabinet appeal a tax issue to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 17. Material Incorporated by Reference. (1) The following material is [items-are] incorporated by reference [as-a-part-of] this administrative regulation:

(a) Transportation Cabinet form TC 95-1, Kentucky Trucking Application, effective September 1998 [96-301, "IRP Apportioned Registration", effective October 1995];

(b) Transportation Cabinet form TC 95-303, Schedule A, "IRP Apportioned Registration", effective December 1997 [95-196]-303; "Supplemental Kentucky Application for IRP Apportioned Registration" effective January 1998 [October 1995];

(c) Transportation Cabinet form TC 96-167, "Affidavit for Replacement-County/Affidavit for Nonexchange-County" effective April 1992;

(d) "Kentucky [1997] IRP, Apportioned Registration Manual" [International Registration Plan, IRP, [Apportioned Registration] Policies and Procedures [Instructional] Manual] effective January 1, 1999 [1998] [1997] and issued by the Kentucky Transportation Cabinet;

(e) "Uniform Operational Audit Procedure Guidelines" effective March 1, 1993 and issued by the Audit Committee of the International Registration Plan, Inc;

(f) "International Registration Plan, With Official Commentary" effective January 15, 1998 [February 14, 1997] and issued by the International Registration Plan, Inc.; and

(g) "International Registration Plan Policies and Procedures Manual" effective April 1994;

(h) Transportation Cabinet form TC 95-303, Schedule B, IRP Apportioned Registration Application, effective December 1997, and

(i) Transportation Cabinet form TC 95-303, Schedule C, Kentucky IRP Apportioned Registration Supplemental Application, effective December 1997.

(2) The material incorporated by reference in subsection (1)(a), (b), (c), (d), (f), [and] (g), (h), and (i) of this section may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers, [The address is] 501 High Street, Second Floor, State Office Building, Frankfort, Kentucky 40622, Monday

through Friday, 8 a.m. to 4:30 p.m. [The telephone number is (502) 564-5301. The hours of operation are weekdays from 8 a.m. through 4:30 p.m. local prevailing time.]

(3) The material incorporated by reference in subsection (1)(e) and (f) of this section may be viewed, copied, or obtained from the Department of Fiscal Management, Division of Audit Review, [The address is] 641 Teton Trail, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [The telephone number is (502) 564-6760. The hours of operation are weekdays from 8 a.m. through 4:30 p.m. local prevailing time.]

ED LOGSDON, Commissioner
GLENN MITCHELL, Commissioner
JAMES C. CODELL, III, Secretary
E. JEFFREY MOSLEY, Office of General Counsel
APPROVED BY AGENCY: September 4, 1998
FILED WITH LRC: September 8, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harmon, Staff Assistant

(1) Type and number of entities affected: All Kentucky-based owners of vehicles with a gross weight above 26,000 pounds and which are to operated in interstate commerce.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, no effect on the cost of living or employment are anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, no effect on the cost of living or employment are anticipated.

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

1. First year following implementation: Allowing personal or business checks to be submitted for payment of the registration fees instead of requiring a secured payment, will eliminate one step in the renewal process for most commercial vehicle owners.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The changes in the procedures manual allowing for staggered apportioned registration will spread the workload of the Apportion Registration Section of the Division of Motor Vehicle Licensing over several months of the year instead of concentrating most of the work in 6 weeks. Allowing personal and business checks to be submitted for payment of registration fees will increase the paperwork for the Transportation Cabinet. The cabinet will have to track down the sender of each check for which there is insufficient funds and attempt to obtain payment. In addition, a data base of the persons from whom the cabinet will not accept unsecured checks will have to be maintained. The largest cost, however, will likely be having to pay other states their share of the registration fees even though a particular check has bounced.

1. First year: Until we know how many checks are bounced each year, we will not have a good idea of how much it will cost the Transportation Cabinet to deal with these.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Transportation Cabinet will implement the administrative regulation with road funds allocated for the motor vehicle licensing function of the Department of Vehicle Regulation.

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

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: A public comment hearing was not held. However, no economic impacts are anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet is required by federal law to participate in the International Registration Plan. Therefore, the changes adopted by that organization must also be adopted in Kentucky. The Transportation Cabinet decided to begin accepting unsecured checks to make registration renewal easier for the trucking companies based in Kentucky. If there are a significant number of bounced checks, the cabinet will reverse this policy decision.

(8) Assessment of expected benefits: Greater ease of dealing with Kentucky state government.

(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: 601 KAR 2:010 also forbids the Transportation Cabinet accepting unsecured checks for apportioned registration purposes.

(a) Necessity of proposed regulation if in conflict: The Transportation Cabinet has filed a notice of intent to amend 601 KAR 2:010 to negate the conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, the Transportation Cabinet will also amend 601 KAR 2:010 for consistency.

(10) Any additional information or comments: Senate Bill 141 passed by the 1998 General Assembly amended KRS 186.020 and 186.051 to mandate a staggered registration program for commercial vehicles. While the Transportation Cabinet had believed that it already had sufficient authority to stagger the registration renewals, the enactment of this bill leaves no misunderstanding.

(11) TIERING: Is tiering applied? No. All vehicles subject to the provisions of the International Registration Plan must follow those provisions when being registered.

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 clerks offices.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The county clerks' offices, like the Department of Vehicle Regulation will experience administrative relief with the spreading out of the registration period of the apportioned registration.

FEDERAL MANDATE COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC Chapter 317

2. State compliance standards. Kentucky was one of the first states to join the International Registration Plan and issues its apportioned registrations in compliance with the provisions of the Articles of Incorporation of IRP. Further, Kentucky collects and processes the registration tax for other jurisdictions as required by IRP.

3. Minimum or uniform standards contained in the federal man-

date. The federal mandate requires each state to participate in the International Registration Plan. The IRP requires each state to issue apportioned registration plates to all vehicles with a gross weight above 26,000 pounds which are to be operated in interstate commerce. It further requires each state to collect the proportional registration fees for each state in which the apportioned vehicle will be operated.

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

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Board of Tax Appeals
(Amended After Hearing)

802 KAR 1:010. Rules of practice and procedure.

RELATES TO: KRS 131.345

STATUTORY AUTHORITY: KRS 131.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.345 provides that "Appeals to the Kentucky Board of Tax Appeals shall be in accordance with rules prescribed by the board." The following rules have been adopted in compliance with that authority.

Section 1. Petition of Appeal. (1) A document or pleading which initiates an appeal to the Kentucky Board of Tax Appeals shall be styled "Petition of Appeal." The petition and subsequent pleadings shall refer to the appealing party as "appellant", and to the responding party as "appellee".

(2) Petitions of appeal to the board shall be filed in person or by mail at the principal office of the board in Frankfort, Kentucky. Filings by facsimile or other electronic means shall not be accepted. The petition [Appeals to the Board. (1) All appeals from rulings, orders or determinations of any state or county agency shall be filed with the board by filing a complaint or petition of appeal with the board at its offices at Frankfort, Kentucky, within thirty (30) days from the date of the mailing of the agency's ruling, order or determination.

(2) Except as provided in subsection (3) of this section, such appeal shall be filed in quintuplicate and shall contain a brief statement of the law or facts in issue and the appellant's [petitioner's] position as to the law or facts. [Said appeal shall have attached thereto a copy of the final ruling, order or determination of the agency appealed from.]

(3) In appeals from final rulings, orders, or determinations of a county board of assessment appeals, the appellant shall file an original and two (2) copies of the petition of appeal and shall include three (3) copies of the county board of assessment appeals' final ruling, order or determination.

(4) In appeals from final rulings, orders or determinations of a state government agency, the appellant shall file an original and four (4) copies of the petition of appeal and shall include five (5) copies of the state government agency's final ruling, order or determination.

(5) If an appellant fails to comply with subsections (3) or (4) of this section, the petition of appeal shall be accepted by the board; however, failure by an appellant to remedy noncompliance after notice shall subject the appellant's petition to dismissal.

Section 2. Representation in Proceedings Before the Board. (1) If a party is represented by an attorney in proceedings before the board, his attorney shall file an entry of appearance within thirty (30) days after the date on which the petition of appeal is filed. An appellant's attorney shall not be required to file an entry of appearance if he files the petition on behalf of the appellant.

(2) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule (SCR) 3.030(2). [All appeals from final rulings of a county Board of Assessment Appeals shall be appealed in like manner, except that such appeal shall be filed in triplicate.

Section 2. Hearings. (1) Hearings shall be held at the offices of the

board at Frankfort, Kentucky, except that a case may be assigned for hearing elsewhere in the Commonwealth of Kentucky when deemed necessary to afford a taxpayer or interested party an opportunity to appear before the board with as little inconvenience and expense as practicable.

(2) All appeals shall be heard by the full board, provided that one (1) member thereof may be authorized to hear an individual appeal pursuant to order entered of record by the board.

(3) Appeals shall be assigned for hearing upon motion of any interested party or the board may, in its discretion, assign any appeal for hearing, having due regard for the convenience of the parties. Except where an appeal is assigned for hearing by agreement of the parties, all interested parties shall be given reasonable notice of a hearing date.]

(3) [(4)] Parties to actions filed with this board shall [may] be represented at the hearings as follows:

(a) An individual may represent himself in hearings before the board;

(b) An individual who is not an attorney shall [may] not represent any other individual, corporation, trust, estate, partnership or artificial entity [corporations or individuals] before the board[;

(c) An attorney who is not licensed to practice in Kentucky may practice before the board if he obtains local counsel in compliance with RAP 3.030(b);

(5) All hearings shall be formally reported by the reporter for the board.]

Section 3. Discovery. (1) The parties shall conclude discovery at least fifteen (15) days prior to the date scheduled for hearing an appeal. Discovery shall be conducted under the Kentucky Rules of Civil Procedure, to the extent not in conflict with KRS Chapter 13B, 131.310-131.370, 133.120, or with this administrative regulation. [Motions to compel discovery shall be governed by GR 37.01. Failure to comply with discovery may subject the noncomplying party to the sanctions set forth in GR 37.02 through GR 37.05, including but not limited to limitation of proof, judgment against the noncomplying party, and involuntary dismissal.]

(2) A party may introduce the testimony of a witness by deposition at a hearing before the board or its hearing officer. [Procedures and Evidence. (1) The Rules of Civil Procedure shall govern in all procedural matters coming before this board.

(2) The rules of evidence governing civil proceedings in the Commonwealth of Kentucky shall, insofar as practicable, govern hearings before the board.

(3) Evidence may be introduced by oral testimony at a hearing before the board or by deposition.] The Kentucky [provisions of the] Rules of Civil Procedure shall govern [apply to] the taking of depositions in proceedings before the board or its hearing officer. A deposition [No depositions] shall not be included in the evidentiary record [considered,] unless it is filed with the board within ten (10) days after the date of the hearing. The board or its hearing officer shall extend the time to file a deposition only upon a showing of good cause by the party requesting the extension. [submission of the appeal, it has been filed with the board; provided, however, that the board may, for good cause shown and upon motion filed within said ten (10) days grant an extension of time to file any deposition.

(4) The petitioner or appellant shall be required to complete his evidence in chief and so announce before respondent or appellee shall be required to introduce evidence, unless otherwise ordered by the board.]

(3) [(5)] The parties to an appeal may stipulate the relevant facts [in issue] in whole or in part. If the relevant facts are stipulated in whole, a hearing shall not be required. [Said] Stipulations of fact shall be written [reduced to writing] and filed with the board prior to the hearing of an appeal. The board or its hearing officer shall extend the time to file stipulations of fact only upon a showing of good cause by the party requesting the extension.

(4) Upon motion of a party or by order of the board or its hearing officer, a prehearing conference may be scheduled directing the attorneys for the parties to appear. [All parties are encouraged to stipulate facts whenever possible.

(6) Discovery by parties shall be concluded fifteen (15) days prior to the time assigned for hearing by the board.]

Section 4. Procedure and Evidence. (1) KRS Chapter 13B shall govern all procedural and evidentiary matters before the board.

(2) In evidentiary matters ~~[in which KRS Chapter 13B is not dispositive:]~~ the Kentucky Rules of Evidence shall guide the board unless they are in conflict [be instructive, but not conclusive, to the extent they are consistent] with KRS Chapter 13B, KRS 131.310-.370, 133.120 and this administrative regulation.

Section 5. Order of Proof at Hearing. (1) At the hearing, the appellant shall first produce his evidence; the appellee will then produce his evidence. The appellant shall ordinarily exhaust his evidence before the appellee begins; however, the order of proof may be regulated by the board or its hearing officer to expedite the hearing and enable the board or its hearing officer to obtain a clear view of the whole evidence.

(2) Evidence produced by a party shall be subject to questioning by the adverse party, the board, or its hearing officer.

(3) After the parties offer evidence in chief, they shall be confined to rebutting evidence, unless the board or its hearing officer for good reasons in furtherance of justice permits them to offer additional evidence in chief. ~~[Parties' Failure to Appear at Hearing. (1) Where petitioner or appellant fails to appear at the hearing of his case, and no good cause is shown for his failure to appear, the case may be ordered dismissed for lack of prosecution by the board.~~

~~(2) Where the respondent or appellee fails to appear at the hearing of a case and no good cause is shown for his failure to appear, the board or any designated member thereof may proceed with the hearing of the case and it shall thereafter be submitted as provided by these rules.~~

~~Section 5. Appeal; When and How Submitted. When all interested parties have announced through in presenting evidence or after all interested parties have had a reasonable opportunity to present evidence, the board may order the appeal to be submitted for a final ruling or order. Upon request of either party or upon the board's own motion, the order of submission may give the parties time within which to file briefs. Upon motion of any party and for good cause, the order of submission may be set aside and leave given to any party to take additional evidence.]~~

Section 6. Briefs. (1) The board or its hearing officer may order the parties to file briefs stating the factual and legal issues to be addressed by the board in its final order or by the hearing officer in his recommended order.

(2) Each party shall file with the board an original and three (3) copies of a brief, and shall append to a brief copies of any cited authorities from states other than Kentucky.

(3) Each party shall file with the brief proposed findings of fact, conclusions of law, and final order, if the appeal is heard by the board, or recommended order, if the appeal is heard by the hearing officer.

(4) Briefs shall be typewritten or printed ~~[and filed in quadruplicate with the board. A certification shall accompany any brief to the effect that copies have been served upon all interested parties as provided by the Rules of Civil Procedure]~~. Photostatic copies will be accepted in lieu of typewritten copies. All copies of the brief must be clearly legible and double spaced except for quotations on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point font.

Section 7. Motions, Responsive Pleadings and Time Computation.

(1) A party shall file an ~~[The]~~ original and three (3) copies of any pleadings and motions ~~[motion shall be filed]~~ with the board. All pleadings and motions ~~[and said motion]~~ shall be accompanied by a certification that copies have been served on all interested parties as required by the Rules of Civil Procedure.

(2) A party shall file an original and three (3) copies of a response to a motion within ten (10) days from the date on which the motion is served ~~[filed]~~. The board or its hearing officer may consider a party's failure to respond to a motion as agreement to the action requested by the motion.

(3) A movant may file an original and three (3) copies of a reply to a party's response to his motion within ten (10) days from the date on which the response is filed.

(4) CR 6.05 shall apply to computation of time when a party is served by mail; however, when the board orders some act or pleading to be filed by a particular calendar date, CR 6.05 shall not apply even if a party is served by mail.

(5) The board or its hearing officer may modify response and reply times upon consideration of any scheduled hearing dates or upon good cause shown by the parties.

(6) The board or its hearing officer shall grant a motion for continuance of a hearing only upon a showing of good cause by the party requesting the continuance.

Section 8. Subpoenas. Any member of the board or its hearing officer shall issue a subpoena only upon a request in writing by a party. ~~[Any member of the board, on the request in writing of any party to the appeal before it, or his attorney, shall issue subpoenas requiring the attendance of witnesses and the giving of testimony and subpoena duces tecum requiring the production of any returns, books, papers, documents, correspondence, and other evidence pertaining to the matter under inquiry in accordance with the Rules of Civil Procedure.]~~

Section 9. Records and Costs. (1) No record filed with the board is subject to withdrawal by any person, except on order of the board.

(2) The expense of causing hearing proceedings to be recorded in the manner required by KRS Chapter 13B ~~[Expenses of reporting hearings]~~ shall be paid by the state from the appropriation of the board. If any party desires to have the evidence at a hearing transcribed, he shall cause the reporter to prepare one (1) original transcript to be filed with the board and such additional copies as said party may desire. The party requesting a transcript of evidence shall pay for the original and any requested ~~[copy or]~~ copies. If other parties request copies of the transcript, each party shall pay for his own requested copy. ~~[Any other interested party may request a copy or copies of said transcript and shall pay for the same.]~~

GEORGE H. HELTON, Chairman

ROBERT G. LAYTON, Staff Attorney

APPROVED BY AGENCY: September 10, 1998

FILED WITH LRC: September 10, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert G. Layton, Staff Attorney

(1) Type and number of entities affected: Any party, including the attorney general, on behalf of the Commonwealth, aggrieved by any ruling, order or determination of any state or county agency charged with the administration of any taxing or licensing measure.

(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 affect upon competition) for the:

1. First year following implementation: The administrative regulation strengthens the requirement that a party appealing to the Kentucky Board of Tax Appeals file an original and a specified number of copies of the petition of appeal and subsequent pleadings, which has been required under the former administrative regulation but not strictly enforced. An appealing party will bear these copying costs under the proposed administrative regulation, and the board will be relieved of the copying, maintenance and staff expenses necessitated by making the required copies which have not been filed with an original pleading in current practice. For the amendments after written comment, there will be a reduction in copying costs for the party appealing, since Kentucky authority is not required to be attached to briefs. The board estimates that this will result in an average reduction in copying costs of \$2.50 per appeal in which briefs are filed.

2. Second and subsequent years: Compliance, reporting and paperwork requirements are expected to remain the same as the

first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year: The board will be relieved of the copying, maintenance and staff expenses necessitated by making required copies or original pleadings filed with the board that parties fail to provide.

2. Continuing costs or savings: The board expects the copying and related cost savings to continue.

3. Additional factors increasing or decreasing costs: KRS Chapter 13B, which governs the conduct of administrative hearings, requires the board to promulgate the proposed administrative regulation for statutory compliance, imposes increased costs on the board because of the need to employ one full-time hearing officer. The board requires the employment of hearing officers to comply with mandates in KRS Chapter 13B that impose time limits for issuing decisions by the board as well as heightened statutory requirements on the hearing process which cannot be met by the board. However, the employment of a hearing officer is reducing the board's current case backlog and will maintain a timely docket in the future. The reduction of the case backlog will minimize staff costs and return significant revenue to the Commonwealth that has been held by pending appeals.

(b) Reporting and paperwork requirements: The board anticipates no change in reporting and paperwork requirements as a result of the proposed administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues should benefit by the efficient and timely rendition of decisions by the board assisted by the promulgation of the proposed administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Implementation and enforcement will be funded by the board's budget appropriation.

(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: Alternative methods to promulgation of the proposed administrative regulations are not possible due to the strict compliance requirements imposed on the board by KRS Chapter 13B.

(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: 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 regulations: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, because KRS Chapter 13B requires constitutional uniformity in the application of administrative hearing procedures to all parties to the hearing process, which is the subject matter of the proposed administrative regulation. Therefore, tiering is constitutionally prohibited in this regulation.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1998

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.050

STATUTORY AUTHORITY: KRS 11A.050(2), (3), 11A.110(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7), public servant as listed in KRS 11A.010(9)(a)-(h) [(f)], and candidate for the public offices listed in KRS 11A.010(9)(a)-(h) [(f)] 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 administrative regulation prescribes the form and incorporates it by reference.

Section 1. Definition. (1) "Candidate [Candidates]" is defined by KRS 11A.010(13).

(2) "Officer" is defined by KRS 11A.010(7).

(3) "Public servant [servants]" is defined by KRS 11A.010(9).

Section 2. (1) The statement of financial disclosure required of officers and public servants by KRS 11A.050(1) shall be filed on Ethics Commission form "Statement of Financial Disclosure".

(2) Candidates shall file a statement of financial disclosure on Ethics Commission form "Statement of Financial Disclosure".

Section 3. (1) The following documents are incorporated by reference:

(a) "Statement of Financial Disclosure (Rev 030195)"; and

(b) "Instructions for Filing a Statement of Financial Disclosure (Rev 030195)".

(2) These forms may be inspected, copied, or obtained from the Executive Branch Ethics Commission, Room 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, October 26, 1998 at 9 a.m. at the office of the Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954 - Phone, (502) 564-2686 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Dutton, General Counsel

(1) Type and number of entities affected: All officers as defined in KRS 11A.010(7), public servants as listed in KRS 11A.010(9)(a)-(h), and candidates for the public offices listed in KRS 11A.010(9)(a)-(h).

(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 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: There are no additional compliance, reporting, or paperwork requirements other than the what is currently required. Currently, persons defined as "officers", certain public servants, and a limited number of candidates for public office must file a statement of financial disclosure.

2. Second and subsequent years: The requirements will be the same as those required after the 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: This amendment will not change the amount of reporting and paperwork requirements that are currently required in the regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue is already provided for in the commission's budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on 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: None

(11) Tiering: Is tiering applied? No. All officers, public servants, and candidates are treated the same.

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:015. Preadministrative [Preadjudicatory] proceedings.

RELATES TO: KRS 11A.080(1), (2), (3)

STATUTORY AUTHORITY: KRS 11A.110(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: 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 11A.080.

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Section 1. Complaint. (1) A complaint shall state the:

(a) Full name and address of the:

1. Complainant;

2. Complainant's attorney, if an attorney has been retained;

(b) Name of each person alleged to have violated KRS Chapter 11A;

(c) Employment of each alleged violator, if known;

(d) Alleged facts that are the basis of the complaint; and

(e) Statute alleged to have been violated, if known.

(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature.

Section 2. Answer to Complaint. (1) The copy of the complaint and the general statement of applicable law shall be mailed to the person against whom a complaint is filed, by certified mail, return receipt requested.

(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed shall:

(a) File with the commission a written, signed response to the complaint; and

(b) Mail a copy of the response to the complainant.

Section 3. Commission-initiated Investigation [Inquiry]. (1) When the commission initiates a preliminary investigation [inquiry] on its own motion, within ten (10) [sixty (60)] days of initiation of the preliminary investigation [inquiry], it shall notify the person being investigated that he is the subject of a commission investigation [inquiry].

(2) The notice shall be mailed to the person being investigated by certified mail, return receipt requested, at the last known address, or by personal service.

Section 4. Meeting During Preliminary Investigation. (1) The person being investigated may request a meeting with the commission's attorney and the complainant, if any, at any time during the course of the commission's preliminary investigation [inquiry]. He may have an attorney represent him at this meeting.

(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.

(3) Nothing in this section shall be construed to prohibit the commission's attorney or any investigator acting on behalf of the commission from initiating contact with the person being investigated, or the person's attorney if he has retained counsel.

Section 5. Initiation of Administrative [Adjudicatory] Proceeding. If the commission determines to initiate an administrative [adjudicatory] proceeding, it shall issue an initiating order.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, October 26, 1998 at 9 a.m. at the office of the Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954 - Phone, (502) 564-2686 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Dutton, General Counsel

(1) Type and number of entities affected: All executive branch employees.

(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 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: There are no additional compliance, reporting, or paperwork requirements.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: These amendments will not change the amount of reporting and paperwork requirements that are currently required in the regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue is already provided for in the commission's budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on 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: None

(11) Tiering: Is tiering applied? No. All public servants are treated the same.

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:030. Administrative [Adjudicatory] proceedings.

RELATES TO: KRS 11A.100

STATUTORY AUTHORITY: KRS 11A.080(4)(b), 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080(4)(b) gives the commission the authority to initiate an administrative [adjudicatory] hearing to determine whether there has been a violation. This administrative regulation establishes the procedures governing administrative [adjudicatory] proceedings.

Section 1. Initiating Order. To initiate an administrative [adjudicatory] proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative [adjudicatory] proceeding. The initiating order shall:

- (1) State the name of the respondent;
- (2) State the alleged facts upon which the initiating order is issued;
- (3) State each violation which the commission found probable cause to believe occurred, or is occurring, referencing specific statutes and administrative regulations which relate to the violation involved;
- (4) State that all material submitted to the commission by the respondent or his attorney shall be addressed to the Executive Branch Ethics Commission;
- (5) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order;
- (6) Order the respondent to appear at a hearing scheduled or state that it will be set by subsequent order. Any order specifying a hearing date shall include the:
 - (a) Date, time, place, and nature of the hearing;
 - (b) Name, official title, and mailing address of the hearing officer, if a hearing officer has been appointed;
 - (c) Name, official title, and mailing address of the chairman of the commission, if a hearing officer has not been appointed; and
 - (d) Names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the commission;
- (7) State the respondent's right to legal counsel;
- (8) State the respondent's right to examine, prior to the hearing, any evidence which will be used at the hearing and any exculpatory information in the commission's possession;
- (9) State the respondent's right to subpoena witnesses on his own behalf;
- (10) State that if the respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default; and
- (11) State the respondent's right to appeal a final commission order to the Franklin Circuit Court within thirty (30) days of service.

Section 2. Service. An order shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the respondent, or by personal service. Service by mail shall be complete upon the date on which the agency receives the return receipt or the return notice. [considered issued the date it is signed by a majority of the commission and shall be served upon the respondent pursuant to the Kentucky Rules of Civil Procedure.]

Section 3. Answer. (1) A written answer to the initiating order shall be filed with the commission within twenty (20) days of service, by the:

- (a) Respondent, if he has not retained counsel; or
- (b) Respondent's attorney, if he has retained counsel.

(2) The answer shall be verified by the respondent.

Section 4. Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative [adjudicatory] proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 5. Discovery. (1) The presiding officer shall issue subpoenas on written request of the respondent, his attorney, the commission or the commission's attorney.

(2) If the presiding officer is not the chairman, he shall forward any subpoena requests to the chairman for his signature.

(3) The respondent shall bear the cost of serving the subpoenas, paying any witness fees and expenses for subpoenas issued at his or his attorney's request.

Section 6. Prehearing Disclosure of Evidence. (1) By the commission:

- (a) The respondent may inspect any evidence to be used at the hearing and exculpatory information in the commission's possession;
- (b) No person shall have the right to examine or copy the personal notes, observations, conclusions, or work product of the commission's legal counsel;
- (c) An appointment for the inspection of evidence shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation.

- (d) The respondent may request copies of any evidence to be used at the hearing and exculpatory evidence.
- (e) The commission shall not charge the respondent for providing such copies.
- (2) By the respondent. At least thirty (30) days prior to the scheduled adjudicatory hearing, or as specified in the procedural schedule established by the initiating order or by the presiding officer, the respondent shall furnish to the commission's legal counsel:
 - (a) Copies of any documents which the respondent intends to introduce at the hearing;
 - (b) Copies of any documents or other items of tangible evidence within the respondent's possession or control which he intends to introduce at the hearing;
 - (c) A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing; and
 - (d) Any other information as the presiding officer deems appropriate.
- (e) The respondent shall not charge the commission for copies of material provided:
 - (3) Continuing duty to disclose:
 - (a) After disclosure has been completed, each party shall remain under an obligation to disclose items of evidence that may come to his attention, as soon as practicable.
 - (b) The presiding officer may refuse to allow a party to introduce evidence that was not properly and timely disclosed to the other party.

Section 7. Motions. Except for motions made during the course of an adjudicatory hearing, all motions shall be in writing, signed by the movant or his attorney, and filed with the commission.

Section 8. Prehearing Conferences. (1) The respondent may request a prehearing conference with the presiding officer and the commission's attorney if the request is made:

- (a) At least five (5) days prior to the date scheduled for the hearing; or
- (b) As designated in a commission order.

(2) The presiding officer shall conduct the prehearing conference unless the chairman designates another person to conduct it.

(3) The conference may be held to:

- (a) Discuss jurisdictional matters;
- (b) Prepare stipulations of facts or issues;
- (c) Clarify issues;
- (d) Rule on motions;
- (e) Take evidence;
- (f) Issue subpoenas and orders; and
- (g) Consider other matters that promote the orderly and prompt conduct of the proceeding.

(4) At the conclusion of the prehearing conference, the presiding officer shall issue a prehearing order incorporating all matters determined at the prehearing conference.

(5) If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the hearing.

Section 9. Settlement. [Conferences. (1) The respondent may request a settlement conference with the commission's attorney, if the request is made at least five (5) days prior to the date scheduled for the hearing.

(2) If the commission's attorney recommends a settlement offer be approved, he shall sign the offer and forward it to the chairman.

(3) If a majority of the commission agrees to accept the settlement offer, each approving member shall sign the offer and the chairman shall notify the presiding officer and the commission's attorney that the offer has been approved.

(4) Within ten (10) days of the approval of the offer, the commission shall issue an order which states that the case is concluded by settlement.

(5) The commission shall not approve a settlement that provides for the confidentiality of:

- (1) [(a)] The existence of the settlement; or
- (2) [(b)] Any of the terms of the settlement.

[Section 10. A party may represent himself or be represented by

counsel:

Section 11. Presiding Officer. (1) The presiding officer shall be:

- (a) The chairman of the commission; or
- (b) A person designated by the chairman to serve as the presiding officer. This person can be another member of the commission or a hearing officer appointed by the commission to preside over the proceeding;
- (c) A presiding officer shall:
 - 1. Conduct prehearing activities; and
 - 2. Submit recommended findings of fact and conclusions of law to the commission;
- (d) Hearings may be heard by one or more members of the commission, the commission's designated hearing officer, or both. One (1) person shall be designated the presiding officer for each hearing;
- (2) If a person has served as an investigator with regard to the subject matter of a hearing, he shall not serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing;
- (3) Except as provided by subsection (2) of this section, a person shall not be disqualified from serving as the presiding officer of a hearing if he has participated in the decision of the commission to initiate the adjudicatory proceeding.

Section 12. Disqualification of a Presiding Officer. (1) A presiding officer shall be disqualified, and shall not serve as a presiding officer if he:

- (a) Served as an investigator or prosecutor in the proceeding or in the preadjudicatory stages of the proceeding;
- (b) Participated in an ex parte communication which would prejudice the proceeding;
- (c) Has a pecuniary interest in the outcome of the proceeding; or
- (d) Has a personal bias toward any party to a proceeding which would cause a prejudgment of the proceeding;
- (2)(a) A party may file a written motion to disqualify a presiding officer within twenty (20) days of the latter of the:
 - 1. Receipt of notice of the identity of the presiding officer; or
 - 2. Discovery of facts establishing grounds for disqualification of the presiding officer.
- (b) The motion shall state the facts or reasons supporting it.
- (c) The commission shall state in writing the facts or reasons for its decision on the motion to disqualify.

Section 6. [13:] Ex Parte Communications. Once an administrative [adjudicatory] proceeding has commenced, the commission, its executive director, commission counsel, [a presiding officer, employees of the presiding officer,] the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or an issue of fact or law related thereto, except upon notice and opportunity for all parties to participate.

[Section 14. Order of Proceeding. (1)(a) The presiding officer shall call the hearing to order, identify the parties to the action, and read the initiating order.

- (b) The presiding officer shall then ask the parties to state any objections or motions, and shall rule upon any objections or motions;
- (c) Opening statements shall then be made, with the attorney for the commission proceeding first;
- (d) Either party may waive opening statement;
- (2)(a) The taking of proof shall commence with the calling of witnesses on behalf of the commission;
- (b) Witnesses shall be examined first by the attorney for the commission, then by the respondent or that person's attorney, and finally by the presiding officer and any member of the commission hearing the case;
- (c) Rebuttal examination of witnesses shall proceed in the same order;
- (d) Documents or other items may be introduced into evidence as appropriate;
- (3)(a) Upon conclusion of the case for the commission, the respondent shall call his witnesses;
- (b) Witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the commission, and finally

by the presiding officer and any member of the commission who is hearing the case:

- (c) Rebuttal examination of those witnesses shall proceed in the same order;
- (d) Documents or other items may be introduced as appropriate;
- (4) Objections to evidentiary offers may be made by any party and shall be noted in the record;
- (5)(a) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the commission always proceeding last;
- (b) The presiding officer may impose reasonable time limitations upon the time allowed for opening and closing statements;
- (c) Either party may waive his right to give a closing statement;
- (6)(a) During a proceeding, if a person's name is mentioned, he shall be permitted to make a verbal or written statement in opposition to the mention of his name if:
 - 1. He notifies the presiding officer, a member of the commission, or commission staff of his opposition; and
 - 2. The presiding officer determines that he may be affected adversely by the mention of his name;
- (b) A person governed by the provisions of this section may be represented by counsel;
- (c) If a written statement of opposition is accepted, it shall be incorporated into the record.]

Section 7. [15:] Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

- (2)(a) A transcript of the testimony taken during the hearing shall be kept by the commission;
- (b) Upon request and payment of the appropriate fee, a copy of the transcript shall be available to the respondent from the:
 - 1. Court stenographer; or
 - 2. Commission, if the stenographer is unable to furnish a copy.
- (c) A copy of the transcript of the hearing shall be available to all commission members;
- (d) Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

Section 8. [16:] Official Record. For each administrative [adjudicatory] proceeding, the commission shall keep an official record of the proceedings which shall consist of:

- (1) All notices, pleadings, motions, and intermediate rulings;
- (2) Any prehearing orders;
- (3) Evidence received and considered;
- (4) A statement of matters officially noticed;
- (5) Proffers of proof and objections and rulings thereon;
- (6) Proposed findings, requested orders, and exemptions;
- (7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;
- (8) All requests by the hearing [presiding] officer for an extension of time, and the response of the commission;
- (9) Ex parte communications placed upon the record [by the presiding officer]; and
- (10) The transcript of the hearing.

[Section 17. Continuances. Proceedings in Absentia. (1) A request by the respondent for a continuance of the hearing shall be considered by the presiding officer if it is made:

- (a) Three (3) days prior to the scheduled hearing date, and based upon good cause; or
- (b) Later than three (3) days prior to the scheduled hearing, because of substantiated medical or other emergency;
- (2) The decision whether to grant a continuance shall be made by the presiding officer;
- (3) Unless the respondent establishes that his failure to appear at a scheduled hearing for which a continuance has not been granted in advance was due to an unforeseen medical or other emergency:
 - (a) The hearing may be held as scheduled; and
 - (b) The failure to appear shall constitute a waiver of the respondent's right to appear.]

DON WIMBERLY, Chair
DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, October 26, 1998 at 9 a.m. at the office of the Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954 - Phone, (502) 564-2686 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Dutton, General Counsel

(1) Type and number of entities affected: All executive branch employees.

(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 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: There are no additional compliance, reporting, or paperwork requirements.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment will not change the amount of 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: Revenue is already provided for in the commission's budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on 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: The reason this regulation is being amended is to prevent any conflict, overlap, or duplication with KRS Chapter 13B, Administrative Hearings.

(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? No. All public servants will be treated the same.

GENERAL GOVERNMENT CABINET Executive Branch Ethics Commission (Amendment)

9 KAR 1:050. Approval of outside employment of a public servant.

RELATES TO: KRS 11A.040(9)

STATUTORY AUTHORITY: KRS 11A.040(9)

NECESSITY, FUNCTION, AND CONFORMITY: 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. [KRS 11A.040(9) requires the Executive Branch Ethics Commission to promulgate administrative regulations establishing a procedure for approval of outside employment of a public servant.]

Section 1. (1) ~~[On or after July 15, 1994,]~~ A public servant who wishes to request approval of his appointing authority ~~[the Executive Branch Ethics Commission]~~ for outside employment shall submit a statement under oath to the appointing authority of his agency as follows:.

"I request approval of off-duty employment with (name of outside employer). As a (public servant's job title), I am not involved in the (name of state agency's) decisions concerning (name of outside employer). If the request is approved, I agree that if, in the future, I realize that I will be involved in such decisions, I will immediately notify [the] (appointing authority) ~~[and the Executive Branch Ethics Commission]~~ and take steps to avoid any conflict of interest."

(2) The public servant shall attach to this statement:

(a) The public servant's current P-1 personnel form and job description, and the name, title and location of the public servant's immediate supervisor.

(b) The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job.

(c) An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.

Section 2. The appointing authority shall review the request and consider, including but not limited to, the following factors:

(a) The degree of separation between the public servant's state duties and decisions concerning the outside employer. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.

(b) The public servant's level of supervisory or administrative authority, if any. Example: whether the public servant has ultimate responsibility for a decision concerning the outside employer, although he is not involved in the decision-making process.

(c) Whether the outside employment will interfere or conflict with the public servant's state employment duties.

1. A conflict shall exist if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.

2. A conflict shall exist if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.

(d) The duration of the outside employment; [and]

(e) Whether the outside employment would create an appearance of conflict of interest with state duties; and

(f) Whether the public servant is an auditor, inspector or other regulatory personnel of a division which is currently auditing, inspecting or reviewing or has scheduled an audit, inspection or review of the

outside entity for which the public servant requests approval to work.

Section 3. The appointing authority shall consider the factors set forth in Section 2 of this administrative regulation and, if the appointing authority approves the outside employment request, certify in writing the following: [-

(3)(a) The commission shall consider approval of the outside employment if the public servant's appointing authority submits to the commission the following statement:]

"As appointing authority for the (agency), I certify that as a (public servant's job title), (public servant's name) is not involved in this agency's decisions concerning (outside employer); that his off-duty employment by (outside employer), in my opinion, will not create a real or perceived conflict of interest which would damage public confidence in government; and that I approve such off-duty employment."

[(b) The appointing authority shall attach to this statement:

1. The public servant's current P-1 personnel form and job description, and the name, title and location of the public servant's immediate supervisor.

2. The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job.

3. An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.]

Section 4. On January 15, April 15, July 15, and October 15 of each year, the appointing authority shall file with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment during the preceding quarter, along with the name of the outside employer of each.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, October 26, 1998 at 9 a.m. at the office of the Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 273, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954 - Phone, (502) 564-2686 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Dutton, General Counsel

(1) Type and number of entities affected: All executive branch employees.

(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 received.

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

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

1. First year following implementation: The public servant will

have to provide the appointing authority some paperwork regarding his official position and his outside employer. The appointing authority will have to file quarterly reports of the employees who have been approved for outside employment.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The public servant will have to provide the appointing authority some paperwork regarding his official position and his outside employer. The appointing authority will have to file quarterly reports of the employees who have been approved for outside employment.

(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: Revenue is already provided for in the commission's budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is the alternative method. This regulation provides for the appointing authority to approve outside employment requests instead of the commission.

(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: None

(11) Tiering: Is tiering applied? No. All executive branch employees will be treated the same.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student Services (Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

Section 1. (1) In order to receive a KHEAA grant, the 1999-2000 [1998-99] Free Application for Federal Student Aid (FAFSA) shall be completed and submitted in accordance with the instructions provided on the FAFSA.

(2) An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award.

(3) A person who submits a completed FAFSA shall not be eligible

for a KHEAA grant for an academic year in which the person:

- (a) Did not select on the application an educational institution that participates in a KHEAA grant program;
- (b) Is not a:
 - 1. United States citizen or eligible noncitizen; and
 - 2. A resident of Kentucky;
- (c) Is a graduate student; or
- (d) Will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking financial assistance.

Section 2. (1) If the student provides written notification of a change of the first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution.

(2) If the student changes his choice of educational institution after August 1:

(a) A KHEAA grant award for the fall academic term shall be revoked; and

(b) Except as provided in subsection (3) of this section, the grant program award amount for the spring academic term shall be recomputed, based upon the new choice of educational institution.

(3) If the student changes his choice of educational institution after December 1, the KHEAA Grant Program Award for the spring academic term shall be revoked.

Section 3. Incorporation by Reference. (1) The 1999-2000 [1998-99] Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, October 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, October 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: A total of 78 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 1998, there were 179,165 applicants and 25,703 students received KHEAA grants.

(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: Neither cost of living nor employment will be affected. The Free Application for Federal Student Aid (FAFSA) is processed free of charge.

(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: Cost of doing business will not be affected.

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

1. First year following implementation: There will be no increase in reporting or paperwork, nor any increase or decrease in cost. There is no effect upon competition. The application process for KHEAA grants is not changed. The proposed amendment to this administrative regulation merely updates the reference to the version of the form used as an application because of the new academic year.

2. Second and subsequent years: Same as (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant direct or indirect costs or savings. The application process for KHEAA grants is not changed. The proposed amendment to this administrative regulation merely updates the reference to the version of the form used as an application because of the new academic year.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. N/A

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

(a) Geographical area in which administrative regulation will be implemented. No economic impact is anticipated. No comments were received.

(b) Kentucky: Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:130 would identify the appropriate application form that is revised merely to reflect the 1999-2000 academic year.

(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 the environment or public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments KHEAA uses the Free Application for Federal Student Assistance (FAFSA) as the application for KHEAA grants. Use of that form provides a uniform application process for students at no cost and makes administration of student aid more efficient for KHEAA and participating schools. The form is therefore incorporated by reference into this administrative regulation. Each year the form is revised to reflect the new academic year. Amendment of the administrative regulation is necessary to incorporate the revised form. There are no substantive changes in the new form.

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any per-

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son or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student Services (Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769~~(5), (6)(f)~~

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to ~~[prescribes certain]~~ standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes ~~[delineates]~~ selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. ~~[This amendment is necessary to reflect changes in the program made by SB 152 enacted in the 1996 Regular Session of the General Assembly.]~~

Section 1. Definitions. ~~[As used in this administrative regulation, the terms listed below shall have the following meanings:]~~ (1) "Authority" is defined in KRS 164.740(1).

(2) ~~[The definition of]~~ "Critical shortage area" is defined in ~~[governed by]~~ KRS 164.769(2)(a).

(3) ~~[(2) The definition of]~~ "Eligible program of study" is defined in ~~[governed by]~~ KRS 164.769(2)(b).

(4) ~~[(3) The definition of]~~ "Expected family contribution" is defined in ~~[governed by]~~ KRS 164.769(2)(c).

(5) ~~[(4) The definition of]~~ "Participating institution" is defined in ~~[governed by]~~ KRS 164.769(2)(d).

(6) ~~[(5)]~~ "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction.

(7) ~~[(6) The definition of]~~ "Qualified teaching service" is defined in ~~[governed by]~~ KRS 164.769(2)(e).

(8) ~~[(7) The definition of]~~ "Semester" is defined in ~~[governed by]~~ KRS 164.769(2)(f).

(9) ~~[(8) The definition of]~~ "Summer term" is defined in ~~[governed by]~~ KRS 164.769(2)(g).

(10) ~~[(9)]~~ "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Eligibility of Renewal Applicants and Selection Process.

(1) Eligibility of renewal applicants. A person ~~[Persons]~~ who previously received a loan or scholarship ~~[loans or scholarships]~~ pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 prior to July 15, 1996 shall be eligible to apply for and be awarded a renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(2) After awards are made to qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant

to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been conditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(d) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(2) The maximum teacher scholarship award for a student classified as a freshman or sophomore student shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(3) The maximum award ~~[Awards]~~ to an eligible student ~~[students]~~ enrolled less than full time in the semester or summer term in which the eligible program of study will be completed shall be:

(a) [a maximum of] \$210 per credit ~~[semester]~~ hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. Disbursement of a teacher scholarship ~~[scholarships]~~ shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 15, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient ~~[Recipients]~~ failing to attain certification after completion of the eligible program of study or to

commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum.

Section 7. Notifications. A recipient [Recipients] shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student [students] receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution [institutions] shall provide assurances that program information will be disseminated to students enrolled at the institution [their institutions]. The participating institution [institutions] shall actively recruit students from minority population groups for participation in this program.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, October 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, October 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This administrative regulation delineates selection criteria, disbursement procedures,

cancellation of repayment procedures and repayment obligations related to scholarships provided under the Teacher Scholarship Program. During FY 1998 a total of 114 initial scholarships and 236 renewal scholarships were awarded to applicants under the Teacher Scholarship Program for a total dollar amount of \$1,608,000. It is anticipated that during FY 1999 there will be 358 initial and 130 renewal scholarships awarded under this program, for a total dollar amount of \$1,671,100.

(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: There will be minimal savings to the public. This administrative regulation only delineates selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the Teacher Scholarship Program. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend participating institutions of postsecondary education and plan to teach in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The proposed amendment to this administrative regulation will have no effect on the cost of doing business for any entity.

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

1. First year following implementation: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. The proposed amendment will not affect the compliance, reporting and paperwork requirements for the public, the institutions of higher learning or the authority.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no indirect or direct costs or savings to the authority, because there is no change in the aggregate maximum that a student may receive for the entire program of study and there are no changes in the compliance, reporting and paperwork requirements.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The proposed amendment to this administrative regulation will have no effect on the reporting and paperwork requirements of the public, the institutions of higher learning, or the authority.

(4) Assessment of anticipated effect on state and local revenues: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. There is no change in the aggregate maximum that a student may receive for the entire program of study. There will be no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The revenue for the implementation and enforcement of this administrative regulation is provided by three sources: the General Fund, Special Deposit Trust Fund, consisting of money collected from previous recipients, and net lottery proceeds transferred from a Student Financial Aid and Advancement Fund.

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

(a) Geographical area in which administrative regulation will be implemented: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no economic impact as the result of the proposed amendment to this administrative regulation.

(b) Kentucky: The proposed amendment to this administrative

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regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no economic impact as the result of the proposed amendment to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the maximum scholarship award for an academic year were considered. The proposed amendment to this administrative regulation is necessary since the aggregate maximum scholarship award for undergraduates is \$12,500 and freshmen and sophomores would exhaust funding before completing the teacher education program if allowed to borrow up to \$5,000 each year.

(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 is no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect on public health and environmental welfare.

(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: There is no known conflict.

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

(10) Any additional information or comments: The proposed amendment to Section 3(1) of this administrative regulation will retain maximum scholarship awards of \$5,000 (exclusive of a summer session) for an academic year, \$2,500 for a semester and \$1,250 for a summer session for students classified as a junior, senior, post-baccalaureate, or graduate student and will establish separate limits of \$1,250 (exclusive of a summer session) for an academic year, \$625 for a semester, and \$325 for a summer session for students classified as a freshman or sophomore. This amendment is a necessary change since the aggregate maximum for undergraduate is \$12,500 and freshman and sophomores would exhaust funding before completing the teacher education program if allowed to borrow up to \$5,000 each year.

(11) Tiering: Was tiering applied? No. This administrative regulation prescribes uniform procedures for administration of the Teacher Scholarship program. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the authority. 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.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:031. Directions and [;] precautionary statements for feed with additives.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.490 to 250.631, regarding commercial feeds. This administrative regulation requires that directions for feeding and precautionary statements, if any, be provided with feed containing additives to ensure [that commercial feeds bear adequate directions and precautionary statements to enable] safe and effective use of the product.

Section 1. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds contain-

ing additives (including drugs, special purpose additives, or nonnutritive additives) shall:

(1) be adequate to enable safe and effective use of the product for its intended purpose by users with ordinary knowledge of the intended purpose and use of the feed, including [such articles; and

(2) include, but not be limited to,] all information prescribed by [all] applicable regulations under the Federal Food, Drug and Cosmetic Act and by 12 KAR 2:036, Sections 2 and 3, which pertains to non-protein nitrogen.

Section 2. [Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in 12 KAR 2:036.

Section 3. Adequate directions [for use] and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration [with any vitamin, mineral, or other dietary nutrient or compound].

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 900 feed companies that manufacture livestock feed and pet food.

(2) Direct and indirect costs or saving 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: Small cost associated with printing directions on labels. Applies only to feed products containing additives.

2. Second and subsequent years: None. One-time registration of products and printing directions on labels.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal additional cost of time to carefully check labels.

2. Continuing cost or saving: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local reve-

nues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency revenue from inspection 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Requiring directions on labels is the most effective method.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Food safety associated with food animals depends on feed safety, and it will be enhanced by this administrative regulation.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Risk to public health would be greater because of greater risk to feed safety and therefore food safety.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The administrative regulation applies equally to all companies that manufacture feed with additives such as drugs, nonnutritive additives, or other special additives.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 2:046. Poisonous or deleterious substances.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1)

authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes requirements for the safe use of substances that might have deleterious effects if not fed according to accepted standards. [To establish safeguards and limits for the use of substances which may have deleterious effects when used otherwise.]

Section 1. Pursuant to ~~[For the purpose of]~~ KRS 250.541(1)(a), ~~[the terms "poisonous or deleterious substances"]~~ include ~~[but are not limited to]~~ the following:

(1) Fluorine and any mineral or mineral mixture ~~[which is]~~ to be fed ~~[used]~~ directly to ~~[for the feeding of]~~ domestic animals if ~~[and in which]~~ the fluorine exceeds 0.20 percent for breeding and dairy cattle, 0.30 percent for slaughter cattle, 0.30 percent for sheep, 0.35 percent for lambs, 0.45 percent for swine, and 0.60 percent for poultry.

(2) Fluorine bearing ingredients if ~~[when]~~ used in ~~[such]~~ amounts that ~~[raises]~~ ~~[they raise]~~ the fluorine content of the total ration, ~~[excluding roughage, [exclusive of roughage] above [the following amounts:]~~ 0.004 percent for breeding and dairy cattle, 0.009 percent for slaughter cattle, 0.006 percent for sheep, 0.01 percent for lambs, 0.015 percent for swine, and 0.03 percent for poultry.

(3) Any fluorine-bearing ingredient mixed in feed that is to be fed directly to cattle, sheep, or goats consuming roughage regardless of the amounts of grain if it would result in a daily intake of more than fifty (50) milligrams of fluorine per 100 pounds of body weight. ~~[Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per 100 pounds of body weight.]~~

(4) Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets ~~[that]~~ ~~[which]~~ have been extracted with trichloroethyl-

ene or other chlorinated solvents.

(5) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid if ~~[when]~~ used in or on feeds or feed ingredients ~~[that]~~ ~~[which]~~ are considered or ~~[labeled]~~ ~~[reported]~~ to be a significant source of vitamin B, (thiamine).

Section 2. All screenings or by-products of grains and seeds containing weed seeds, if ~~[when]~~ used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of ~~[the]~~ ~~[such]~~ weed seeds so that the finished product contains no ~~[more than zero]~~ viable prohibited noxious weed seeds ~~[per pound]~~ and not more than 480 viable restricted weed seeds per pound.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies manufacturing livestock feed for distribution in Kentucky.

(2) Direct and indirect costs or saving 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. The administrative regulation establishes limits on the amount of potentially poisonous or deleterious substances that a feed may contain.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs. Feeds are routinely analyzed for these substances.

2. Continuing cost or saving: No additional costs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Part of routine laboratory reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency revenue from inspection fees are mainly used for routine laboratory analyses.

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

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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 are no alternative methods to accomplish this requirement.

(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. Benefit is to animal health.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used because definitions of deleterious or toxic levels of fluorine apply equally to all firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:051. Manufacturing conditions.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.541(2)(c) defines a commercial feed as adulterated if its manufacturing, processing, or packaging do not conform to current good management practices (CGMP) regulations. This administrative regulation establishes current good manufacturing practices for feeds containing drugs or antibiotics. [To ensure that feeds containing drugs and antibiotics are manufactured under conditions conducive to the production of a feed which, when fed as directed, is both safe and effective to the consuming animal and safe to the consumer of livestock products.]

Section 1. For the purpose of enforcement of KRS 250.541(2)(c) [(4)] the director adopts the following as current good manufacturing practices:

(1) The regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in the Code of Federal Regulations, Title 21, Part 225, Sections 225.1-225.202.

(2) The regulations prescribing good manufacturing practices for Type A medicated articles as published in the Code of Federal Regulations, Title 21, Part 226, Sections 226.1-226.115.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed.

(2) Direct and indirect costs or saving 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: No additional costs as a result of this administrative regulations. Requirements are mandated by FDA for firms manufacturing medicated feeds.

(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. Food and Drug Administration has already established the requirements.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Routine mill inspections are made in cooperation with FDA and the additional costs of the GMP requirements are small.

2. Continuing cost or saving: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Complete and submit GMP inspection reports to FDA.

(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: Contact with FDA for GMP inspections of medicated feed mills.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods considered. Methods are in the Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Enforcement of good manufacturing practices improves the conditions in and around feed manufacturing plants.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Rodent problems around feed manufacturing plants would increase significantly.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because the requirements apply equally to firms manufacturing medicated feed.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:056. List of manufacturers.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1)

authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.511(1) requires all commercial feed manufacturers in Kentucky to provide to the director the name, place of business, and location of each facility. This administrative regulation requires the director to maintain ~~[To provide]~~ a current listing of the manufacturers in order to facilitate ~~[facilities manufacturing commercial feed in the state. This will aid in the exchange of]~~ correspondence and collections of official feed samples.

Section 1. The Division of Regulatory Services, as an agency of the director, shall maintain ~~[For the purpose of maintaining]~~ current files of feed manufacturers in ~~[under KRS 250.511(1) of the]~~ Kentucky. ~~[Feed Law.]~~ The list shall ~~[of manufacturers on file will]~~ be purged on January 1 ~~[of]~~ each year of all facilities not having current tonnage reports.

Section 2. Firms purged from the list of feed manufacturers shall ~~[will]~~ be notified at the address of record and shall ~~[will]~~ be given the opportunity of being reinstated if the division is notified that reinstatement is desired.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 900 firms that manufacture and distribute livestock feed or pet food in Kentucky.

(2) Direct and indirect costs or saving 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: Small clerical and administrative costs to establish an up-to-date list of feed and pet food manufacturers and current addresses.

2. Continuing cost or saving: Small clerical cost to maintain the list.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No reports necessary. Maintain an up-to-date list.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency revenue funds from inspection 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no suitable alternative method.

(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: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all manufacturers of feed or pet food distributed in Kentucky regardless of size or location.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:061. Registration.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.511(1) and (2) requires all manufacturers and distributors of commercial feeds in Kentucky to register with the director each facility and each feed (except customer-formula feed). This administrative regulation establishes the procedures for ~~[To establish uniformity in]~~ the registration of commercial feeds and ~~[Require registration of]~~ manufacturers and the conditions that manufacturers shall meet to be granted an exemption from registration by the director. ~~[of customer-formula feed to assure compliance with provisions of the Kentucky Commercial Feed Law.]~~

Section 1. ~~[For purpose of enforcement of KRS 250.511(2)]~~ Each manufacturer shall ~~[will]~~ register, on forms available from the director, each manufacturing facility and each feed distributed in Kentucky. The director may grant an exemption to the requirement for registering each commercial feed if ~~[to the firm named on the label provided]~~ the owner or other responsible individual with authority to register feed ~~[execute this act]~~ for the firm has a record of satisfactory compliance with labeling requirements and submits to the director a notarized affidavit certifying the following: ~~[shall submit to the director a notarized affidavit certifying and subject to the following:]~~

(1) Name and mailing address of the firm and a statement acknowledging the firm's responsibility to comply with ~~[provisions of]~~ the Kentucky Commercial Feed Law, including payment of the inspection fee.

(2) That the person requesting exemption has ~~[certifies to having]~~ appropriate knowledge of the labeling requirements of the Kentucky Commercial Feed Law or that a qualified individual is employed to ensure that feeds are labeled according to ~~[in accordance with provisions of]~~ the Kentucky Commercial Feed Law. The name~~(s)~~ and address of the person responsible for product labeling shall be provided, if different than the affiant.

(3) That all feeds distributed in Kentucky ~~[The affiant certifies that]~~

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all feeds distributed in the state] are suitable for their intended purpose in accordance with 12 KAR 2:066, Sections 1, 2 and 6.

(4) ~~That [The firm has a record of satisfactory compliance with labeling requirements or can demonstrate through submission of product labeling or other appropriate means such as Type A article labeling approved by FDA:~~

~~(5) the affiant agrees to provide within thirty (30) days of notification a label for each feed or a specifically designated feed or feed type(s) distributed in Kentucky [the state] for the purpose of determining compliance with labeling requirements. Neither the request nor compliance with the [Such] request shall [not] be construed as a registration process.~~

~~(6) For commercial feed which is distributed in the state to the final purchaser only in an immediate container package weight of ten (10) pounds or less, the person whose name appears on the label as the guarantor or distributor shall provide the director with the name of each product, on forms provided by the director, prior to distribution within the state and pay an annual inspection fee of fifty (50) dollars per product in accordance with KRS 250.561.]~~

~~(5) That [(7)] the affiant agrees to resume registration of each [commercial] feed when notified by the director of unsatisfactory compliance with labeling requirements or of the failure to provide requested labels within thirty (30) days. The firm will have thirty (30) days from receipt of the notice to complete registration of feed products offered for sale in Kentucky. During this period, the affiant may request a meeting [hearing] with the director to resolve labeling violations and seek reinstatement or modification of registration exemption.~~

Section 2. An exemption from registration shall not be construed as preventing the director from enforcing any provision of the Kentucky Commercial Feed Law. The intent of this administrative regulation is that [For the purposes of this act,] a feed, other than a customer-formula feed, of a firm granted an exemption from registration shall be considered "registered."

Section 3. ~~[Under authority of KRS 250.574(1)] A distributor of customer-formula feed shall [will] register as such [a customer-formula feed distributor]. Registration as a customer-formula feed distributor shall [will] be dependent upon [on] agreement by the manufacturer to abide by labeling requirements of KRS 250.521(2) and maintain, [maintenance by the manufacturer] at the mill where formula feed is manufactured, [of] a file of customer-formula mixes.~~

Section 4. Registration of a customer-formula feed distributor shall be subject to cancellation under the same conditions as outlined for registered feeds under KRS 250.511(3) and 250.561(3) [(2)(b)].

Section 5. For commercial feed that is distributed to the final purchaser only in an immediate container package weight of ten (10) pounds or less, the person whose name appears on the label as the guarantor or distributor shall provide the director with the name of each product, on forms provided by the director, prior to distribution within Kentucky and pay an annual inspection fee of fifty (50) dollars per product in accordance with KRS 250.561.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 900 firms that manufacture or distribute livestock feed or pet food in Kentucky.

(2) Direct and indirect costs or saving 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: Small costs associated with registering feed and pet food products by firms distributing feed or pet foods in Kentucky.

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

1. First year following implementation: Each firm will register all products being distributed.

2. Second and subsequent years: Firms with satisfactory compliance records may submit an affidavit to the director as required by this administrative regulation and be exempted from registration. A small cost saving would be realized by these firms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing cost or saving: The agency will save substantial administrative and clerical costs by not registering every product manufactured by the qualifying firms.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Qualifying firms will not be required to submit labels and registration forms. Agency will not need to register each product of qualifying firms but will review labels of products found and inspected in the marketplace.

(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 needed. Money will be saved.

(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 appreciable effect.

(b) Kentucky: No appreciable effect.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is to continue registering all products. This was changed to benefit the manufacturing firms and reduce agency workload.

(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: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all firms that distribute feed or pet food in Kentucky. All have an equal opportunity to be exempted from registration by maintaining a satisfactory record of compliance with the Kentucky Commercial Feed Law.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 2:066. Suitability.

RELATES TO: 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes [To establish suitability] criteria that [for] commercial feeds shall meet in order to be suitable for their intended purposes and determines the procedures for an affidavit attesting to the nutritional adequacy of a commercial feed.

Section 1. The nutritional content of commercial feed shall be as ~~stated [purported or is represented to possess]~~ by its labeling. ~~The [Such animal] feed, its labeling and stated [intended] use shall [must]~~ be suitable for the intended purpose of the product.

Section 2. Commercial feeds for swine, poultry, fish, ~~and~~ veal and ~~[herd]~~ milk replacer for calves, ~~if [when] fed according to directions, shall [must]~~ meet the nutritional requirements established by:

- (1) The Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences; or
- (2) A signed affidavit attesting to the nutritional adequacy of the feed based upon valid scientific evidence. ~~The [Such] affidavit shall be submitted to the director upon request as established [set forth] in Section 6 of this administrative regulation.~~

Section 3. An affidavit certifying ~~that~~ the feed sponsor has valid scientific knowledge ~~assuring [which assures]~~ suitability of the nutritional content of the feed ~~[product]~~ shall be submitted to the director only ~~if [when] the suitability of the feed [a-product] is challenged.~~

Section 4. Submission of a completed ~~[“]Affidavit of Suitability[”]~~ shall serve as proof of suitability; ~~[and] therefore, the feed sponsor shall not be required to provide scientific information nor any reference thereto unless the director has reason to believe that the feed [such product] is not suitable for its intended use. In that [such] case, the director shall have the authority to conduct a hearing requiring the feed sponsor to produce sufficient scientific [and other] evidence of the feed's [product's] suitability.~~

Section 5. Upon receipt by ~~the director~~ of a complete ~~[“]Affidavit of Suitability[”]~~, the feed sponsor may continue to market the product. ~~If an [When such] affidavit is not adequately submitted, the director may place or continue a [to] stop-sale order on the feed and order its removal from the marketplace as well as all other feeds manufactured or distributed under the same product name.~~

Section 6. The Affidavit of Suitability shall contain the following information:

- (1) The feed company's name.
- (2) The feed's product name.
- (3) The name and title of the affiant submitting the document.
- (4) The statement that the affiant has knowledge of the nutritional content of the ~~[listed] feed [product]~~ and is familiar with the nutritional requirements of ~~[for] the animal species and animal class(es)~~ for which the product is intended, as established by the National Research Council of the National Academy of Sciences.
- (5) The statement that the affiant has knowledge of valid scientific evidence that supports the suitability ~~[of the product]~~ for the intended animal species and animal class(es) for which the feed is intended. ~~If [Provided:] the manufacturer states on the label a nutrient guarantee below the minimum National Research Council [NRG] nutrient recommendation, the manufacturer shall specify in the Affidavit of Suitability [have valid] scientific evidence demonstrating that [to demonstrate] a feed with that [containing the minimum guaranteed] nutrient content is suitable for its intended purpose [and so specify in the Affi-~~

~~dit of Suitability].~~

(6) The date of submission.

(7) The signature of the affiant notarized by a ~~[certified]~~ notary public.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies manufacturing livestock feed in Kentucky.

(2) Direct and indirect costs or saving 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. Generally feeds are now required to be suitable for intended purpose and monitoring indicates most feed products are presently formulated to be suitable.

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 cost or saving: 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 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods would not provide the livestock producer protection desired.

(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. Benefits are economic.

(b) State whether a detrimental effect on environmental and

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public health would result if not implemented: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All firms regardless of size or location are required to label feed in accordance with this administrative regulation.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:022. Guarantees.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 259.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guarantee analysis stated in terms the director, by administrative regulation, determines are required to advise the purchaser of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes [To establish] a uniform format for expressing [the expression of] guarantees for pet foods.

Section 1. ~~[The sliding scale method of]~~ Expressing a guaranteed analysis as a range, e.g., ~~[(for example, ")]~~protein 15-18 percent, ~~["]~~ is prohibited.

Section 2. ~~[Pursuant to KRS 250.521(1)(c) of the Kentucky Commercial Feed Law of 1972,]~~ The label of a pet food ~~that [which]~~ is formulated as and ~~claimed [represented]~~ to be a mineral supplement shall include in the guaranteed analysis the minimum and maximum percentages of calcium, the minimum percentage of phosphorus, and the minimum and maximum percentages of salt. The minimum content of all other essential nutrient elements recognized by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profile, or another recognized nutrient profile from sources named [declared] in the ingredient statement, shall be expressed as the elements in units specified in the recognized nutrient profile. Products labeled according to [as per] 12 KAR 3:012, Section 2, may express the mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules or liquid measures) consistent with those used [employed] in the quantity statement and directions for use. Liquids expressed as volume shall [must] also list a weight equivalent (e.g., 1 fl. oz. = 28 grams). ~~[All other minerals, when quantitatively guaranteed, shall be expressed as the element in units of measurement established by a recognized authority on animal nutrition such as the National Research Council.]~~

Section 3. Vitamins guaranteed on pet food labels shall be stated in international units per kilogram (IU/kg) for vitamins A, D, and E. All other vitamins shall be stated in milligrams per kilogram (mg/kg), except vitamin B-12, which may alternatively be guaranteed in micrograms per kilogram (ug/kg).

Section 4. The label of a pet food ~~that [which]~~ is formulated as and represented to be a vitamin supplement shall include a guarantee of the minimum content of each vitamin named [declared] in the ingredient statement. Vitamin guarantees shall [may] be stated in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquid measures) consistent with those used [employed] in the quantity statement and directions for use. Liquids expressed as volume shall [must] also list a weight equivalent (e.g., 1 fl. oz. = 28 grams).

Section 5. The vitamin potency of pet food products distributed in containers smaller than one (1) pound may be guaranteed in approved units per ounce or per unit used [consistent with those employed] for the quantity statement.

Section 6. If the label ~~[of a pet food]~~ does not ~~claim that [represent]~~ the pet food ~~is [to be]~~ either a vitamin or a mineral supplement, but does include a table comparing [of comparison of] a typical analysis of the vitamin, mineral or nutrient content ~~[of the pet food]~~ with levels recommended in the AAFCO Dog and Cat Nutrient Profile, ~~then the [Profiles, then such]~~ comparison may be stated in the units of measurement used by AAFCO. The statement in a table of comparison of the vitamin, mineral, or nutrient content shall constitute a guarantee, and ~~[but]~~ need not be repeated in the guaranteed analysis. The [Such] table of comparison may appear on the label separate ~~[and apart]~~ from the guaranteed analysis.

Section 7. ~~[The use of]~~ Percentages or other references [words of similar import when referring] to nutrient levels established by the AAFCO Dog or Cat Food Nutrient Profile, or other recognized nutrient profile, shall not be used ~~[permitted]~~ on pet food labels, except that ~~[such]~~ direct comparisons ~~[in whole or part]~~ of the individual nutrient contents ~~[of a pet food with those recommended by the recognized nutrient profile]~~ may be made with those recommended by the recognized nutrient profile if [where] the comparisons are expressed in the same quantitative units and the product meets the nutrient profile recommended by the authority and is preceded by a statement to that effect, ~~[as those used by the cited nutrient profile; and]~~

(1) ~~The product in question meets the nutrient profile recommended by the authority; and~~

(2) ~~The comparison is preceded by a statement to that effect.]~~

Section 8. Guarantees for crude protein, crude fat, and crude fiber are not required if the pet food is intended for purposes other than to furnish these substances or if they are of minor significance to the primary purpose of the product, such as mineral or vitamin supplements.

Section 9. Incorporation by Reference. (1) "Official Publication," (1998 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 50 specialty pet food manufacturers.

(2) Direct and indirect costs or saving 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. This administrative regulation provides that vitamins and minerals, other than calcium, phosphorus and salt, present in vitamin or mineral supplements for pets be guaranteed in units consistent with that in the recognized Association of American Feed Control Officials Nutrient Profile or in milligrams per unit consistent with the quantity statement (e.g., tablets, capsules, granules or liquid volume).

2. Second and subsequent years: By eliminating the potential for multiple labeling and by maintaining uniformity with nationally recognized, current labeling practices, these firms will realize substantial saving in labeling costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing cost or saving: 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 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 appreciable effect.

(b) Kentucky: No appreciable effect.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation adopts for Kentucky the nationally accepted labeling for supplements in pet foods. Alternative methods would not accomplish this.

(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: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation broadens options to the manufacturers and is equally advantageous and available to all firms.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 3:027. Ingredients.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(c) requires that a commercial feed label list the common or usual name of each ingredient used in the manufacture of a commercial feed, unless the director promulgates an administrative regulation permitting the use of a collective term for a group of ingredients. This administrative regulation establishes the maximum moisture content allowed and the required format for [To establish uniformity in the] listing [of] ingredients on the label of pet foods.

Section 1. The maximum moisture in [all] pet foods shall be guaranteed and shall not exceed seventy-eight (78) percent by weight or the natural moisture content of the constituent ingredients of the product, whichever is greater. Pet foods such as those consisting principally of stew, gravy, sauce, broth, juice or a milk replacer, which are so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 2. Each ingredient of the pet food shall be listed in the ingredient statement, and ~~[names of]~~ all ingredients ~~[in the ingredient statement]~~ must be shown in letters or type of the same size. The ingredients ~~[of a pet food]~~ shall be listed in descending order by their predominance by weight. Any ingredient for which the Association of American Feed Control Officials has established a name and definition shall be identified by that ~~[the]~~ name ~~[so established]~~. Any ingredient for which no name and definition has been ~~[so]~~ established shall be identified by the common or usual name of the ingredient. Brand or trade names shall not be used in the ingredient statement.

Section 3. The term "dehydrated" may precede the name of an ~~[any]~~ ingredient if it ~~[in the ingredient list that]~~ has been artificially dried.

Section 4. No reference to quality or grade of an ingredient shall appear in the ingredient statement ~~[of a pet food]~~ unless the designation of quality, nature, form, or other attribute of an ingredient is accurate and ~~[unless]~~ the ingredient imparts a distinctive characteristic to the pet food ~~[because it possesses that attribute]~~.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 250 manufacturers of pet food who distribute their products in Kentucky.

(2) Direct and indirect costs or saving 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. The change in this administrative regulation is to include milk replacer as an example of products that may contain greater than 78% water.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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1. First year: None
2. Continuing cost or saving: 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: No additional funds needed.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods considered or acceptable to achieve desired effect.
- (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: None
- (9) Identify any statute, administrative regulation or governmental policy which may be conflict, overlapping, or duplication: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. The advantages provided by this change in the administrative regulation is available to all firms.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 3:037. Additives.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.541 defines adulterated commercial feeds and states how they may be adulterated by additives. KRS 250.551(1) and (2) prohibits the manufacturing and distribution of adulterated products as animal feeds. This administrative regulation ensures [To ensure] that drugs and additives used [employed] in pet foods are safe and effective for their intended purpose.

Section 1. An artificial color may be used in a pet food only if it has been shown to be harmless to pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, [incorporated therein;] shall be [deemed to be] satisfactory evidence that the color is[~~when used pursuant to such regulations;~~] harmless to pets.

Section 2. ~~Before [Prior to] approval of a label and a registration application, the distributor of a [and/or approval of a label for] pet food, containing [which contains] additives (including drugs, other special purpose additives, or nonnutritive additives) shall, upon request of the director, [the distributor may be required to] submit evidence to prove the safety and efficacy of the pet food if [when] used according to label directions [furnished on the label].~~ Satisfactory evidence of the safety and efficacy of a pet food may be:

- (1) If [When] the pet food contains [such] additives that conform [to the use of which conforms] to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or that [which] are [prior sanctioned] or [generally recognized as safe (GRAS)] for such use according to Food and Drug Administration; or
- (2) If [When] the pet food itself is a drug as defined in KRS 250.501(7) and is generally recognized by the Food and Drug Admini-

stration as safe and effective for its labeled [label] use or is marketed subject to an application approved by the Food and Drug Administration under 21 USC 360(b).

Section 3. The medicated labeling format recommended by the Association of American Feed Control Officials shall be used to insure that adequate labeling is provided.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: September 14, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1998, at 10 a.m. eastern time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the 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 administrative regulation. 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: Wilbur W. Frye, Director, Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Bldg., Lexington, Kentucky 40545-0275, phone 606-257-2827, FAX 606-323-9931.

REGULATORY IMPACT ANALYSIS

Contact Person: Wilbur Frye

(1) Type and number of entities affected: 250 pet food manufacturers who distribute products in Kentucky.

(2) Direct and indirect costs or saving 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. The change in this administrative regulation updated the citation of U.S. Food and Drug Administration, Title 21 USC.

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 cost or saving: 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 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Updates federal statute reference; no suitable alternative.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None
 (b) State whether a detrimental effect on environmental and public health would result if not implemented: None
 (9) Identify any statute, administrative regulation or governmental policy which may be conflict, overlapping, or duplication: None
 (10) Any additional information or comments: None
 (11) TIERING: Is tiering applied? No. This administrative regulation applies to all firms manufacturing pet food for distribution in Kentucky.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:230. Reemployment after retirement.

RELATES TO: KRS 61.637, 1998 Ky. Acts ch. 105 sec. 28, ch. 75, 26 CFR 1.401-1(b)(1)(i), 26 USC 401(a)

STATUTORY AUTHORITY: KRS 61.645(9)(f), 26 USC 401(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(f)(1) requires the board to promulgate administrative regulations that: (a) implement the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852; and (b) conform with federal statute or regulation; (2) authorizes the board to promulgate administrative regulations that conform with federal statute and regulation; and (3) provides that provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852 that conflict with federal statute or regulation shall not be available to a member of the Kentucky Retirement Systems. 1998 Ky. Acts ch. 105, sec. 28 provides that beginning August 1, 1998, a retired member who is reemployed in a position covered by the same retirement system from which he retired shall be treated as a new member upon reemployment. 26 USC 401(a) provides that a qualified pension plan shall not pay benefits prior to normal retirement age if a separation from service has not occurred. [The statute provides that a member who retires and who is reemployed within the same retirement system from which he is drawing a benefit may have his retirement stopped and be required to participate.] This administrative regulation establishes [sets out] the: (1) procedures, conditions, and requirements for the employment of a retired member by an agency in the County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System; and (2) penalties for violation of the provisions of this administrative regulation.

Section 1. "Regular full-time position" is defined by:

- (1) KRS 16.505(21), for members of the State Police Retirement System;
- (2) KRS 61.510(22), for members of the Kentucky Employees Retirement System; and
- (3) KRS 78.510(22), for members of the County Employees Retirement System.

Section 2. (1) A [who is reemployed:

Section 4. The retired member or his employer shall notify the retirement system if he has accepted [accepts any] employment with an agency that participates [participating] in the [same] retirement system from which he retired.

(2) If the retired member is under a contract:

(a) He [the member] shall submit a copy of his contract to the retirement system; and

(b) The retirement system shall determine if he [the member] is an independent contractor for purposes of retirement benefits. [The member shall complete and return a Reemployment After Retirement, Form 60, dated August 1994.]

Section 3. If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of his initial retirement date in a position that is required to participate in the retirement system from which he retired, the:

- (1) The member's retirement shall be voided;
- (2) The member shall repay to the retirement system the retirement allowance he received;

ment allowance he received:

(3) The member shall contribute to the member account established for him prior to his retirement; and

(4) The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation. [2. If the member is age seventy (70) or will be age seventy (70) during the calendar year, the member may certify that his income will exceed the maximum allowed by the Social Security Administration for a retired person over age sixty-five (65) and that he wishes to have his retirement allowance stopped and become a contributing member. The member may elect to have his payments continue and not contribute to the retirement system.]

Section 4. (1) A retired member of the Kentucky Employees Retirement System or the State Police Retirement System who after initial retirement is hired by an agency that participates in the Kentucky Employees Retirement System or the State Police Retirement System shall be considered to have been hired by the same employer.

(2) A retired member of the County Employees Retirement System who after initial retirement is hired by the agency from which he retired shall be considered to have been hired by the same employer.

Section 5. (1)(a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of his initial retirement date by the same employer, he shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position:

1. From which he retired; and
2. In which he has been reemployed.

(b) The job descriptions and statements of duties shall be filed with the retirement office.

(2) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's initial retirement date.

(b) The retired member shall repay to the retirement system the retirement allowances that he received after reemployment began.

(c) Upon termination, or subsequent to expiration of the six (6) month period from the date of his initial retirement:

1. The retired member's retirement allowance based on his initial retirement account shall no longer be suspended; and
2. He shall receive the amount to which he is entitled, including an increase pursuant to KRS 61.691.

(d) Except as provided by 1998 Ky. Acts ch. 75, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after his date of employment shall be credited to the second member account.

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(3)(a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, he shall contribute to a second member account in the retirement system.

Section 6. (1) The provisions of this section shall apply, if a retired member is employed:

- (a) One (1) month after initial retirement in a different position; or
- (b) Six (6) months after initial retirement and prior to normal retirement age.

(2) The retired member shall:

- (a) Contribute to a second-member account in the retirement system; and

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(b) Continue to receive his retirement allowance.

(3) Service credit gained after employment shall be credited to the second retirement account.

(3) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account. [3-If the member is under age seventy (70), he shall certify whether his anticipated earnings will exceed the maximum allowable by the Social Security Administration for a retired person.]

Section 4. Upon receipt of the reemployed member's certification, the retirement system shall notify the employer to withhold or not withhold contributions on the member.

Section 5. The form required by the administrative regulation is incorporated by reference and may be obtained from Kentucky Retirement Systems, 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: September 2, 1998

FILED WITH LRC: September 2, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 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: All retired members of KERS, CERS and SPRS, approximately 40,000.

(2) Direct and indirect costs or savings to those affected: This regulation imposes a loss of pension for a period of up to six months on a retired member who returns to work in the same position with the same employer from which he retired.

(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: Retirees are no longer required to annually document anticipated earnings from reemployment. The only retirees who will be required to file documents with the retirement system are those who return to work with the same employer within a year of their original retirement date.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: It is anticipated that monitoring compliance will be less than previously due

removal of the Social Security maximum earnings limitation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The retirement system will not have to send and process the annual form that reemployed retirees were previously required to submit and will only have to review documents of those retirees who return to work with their original employer in less than six months.

(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.

(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: The imposition of a 6-month separation from employment in the same position with the same employer is based on research of revenue rulings issued by the Internal Revenue Service. In order to remain a qualified plan under federal laws and regulations, the retirement system shall not pay benefits where a separation from service has not occurred.

(8) Assessment of expected benefits: The Kentucky Retirement Systems desires to be in compliance with federal requirements in order to remain qualified tax-exempt plan.

(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: There is no statute or regulation in 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: Was tiering applied? Tiering was applied. The loss of pension penalty was imposed only where the reemployment provision might violate federal provisions. No penalties were applied to members who clearly establish a separation from service and later accept other employment within the same retirement system. No penalties apply for retirees who return to work after attaining normal retirement age.

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), 26 CFR 1.401-1(b)(1)(i).

2. This administrative regulation requires that a retired member shall not return to employment within one month and, prior to normal retirement age, in the same or similar position with the same employer from which he retired within six months. The retired member shall forfeit distributions from his pension for the remainder of the six-month period if he violates this requirement.

3. The federal mandate requires that, prior to normal retirement age, there be a separation from service before a qualified pension plan may make distributions to a member. Neither 26 USC 401(a) nor 26 CFR 401-1 establish a clear definition of "separation from service". Revenue Rulings, including Rev. Rul. 56-693 and Rev. Rul. 74-254, have established that a plan will not remain qualified if it makes distributions from the pension plan to employees who have not established a clear separation from service.

4. This administrative regulation attempts to establish the minimum separation from service necessary to comply with the requirements to be a qualified plan under 26 USC 401(a). 1998 Ky. Acts ch. 105, sec. 28, provides that a retired member may return to work in the same retirement system from which he is receiving benefits and continue to receive his pension. Because of the lack of a clear definition of what constitutes separation from service, this provision could result in the member receiving an in-service distribution in direct conflict with the federal provisions. Based on the revenue rulings and advice of tax counsel, the retirement system has established a requirement that 6 months elapse after initial retirement before a retiree may accept employment by the same employer in the same or substantially the same position. A penalty consisting of loss of pension benefits during the 6-month period is imposed to discourage employees from retiring with the intent of returning to work in the same position.

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)**

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

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

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

ANGELA C. ROBINSON, Legal Counsel

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 22, 1998, at 10 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 October 15, 1998, of their intent to attend. If no notification

of intent to attend the hearing is received by October 15, 1998, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Donald R. Speer, Commissioner, Department for Administration, Finance and Administration Cabinet, Room 362, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-2317, FAX (502) 564-4279.

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 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.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)**

201 KAR 2:015. Continuing education.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.110(1) authorizes the board to promulgate administrative regulations to insure the continuing pharmacy education of registered pharmacists. This administrative regulation requires all registered pharmacists holding a license issued by this board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. (1) [A "continuing education unit (CEU)" is defined as ten (10) contact hours of participation in a board accredited continuing pharmacy education program under responsible sponsorship, capable direction, and qualified instruction.] The annual course of study year shall be from January 1 through December 31. Each licensee shall be required to complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) [for the year 1981 and each subsequent year thereafter]. Effective January 1, 1999, a pharmacist shall complete on an annual basis a board-approved continuing education program of not less than one (1) contact hour, the subject matter of which shall be Kentucky state and federal pharmacy, drug and controlled substance law. Continuing pharmacy education hours or units in excess of the number required at the time of renewal of license may not be transferred or applied to future requirements.

(2) A "unit" is defined as a measurement of value applied to a particular continuing pharmacy education activity and is the estimate by the board of the benefit it may contribute to competence in the practice of pharmacy.

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

- (a) Cassette and audiovisual presentation;
- (b) In-company professional seminars;
- (c) Accredited school of pharmacy continuing education programs;
- (d) Postgraduate courses in pharmaceutical sciences;
- (e) Correspondence courses;
- (f) Programs granted continuing education credit by other states;
- (g) The American Council on Pharmaceutical Education;
- (h) Continuing education television series;
- (i) Programs sponsored by allied professional groups; and
- (j) Professional society and association sponsored programs.

(2) The board approval of each program shall expire at the end of two (2) [three (3)] years.

Section 3. In-state continuing education programs not provided by sponsors approved pursuant to Section 4 of this administrative regulation. [sponsors] are responsible for submitting to the board for final accreditation continuing education programs for participants.

(1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.

(2) Programs should be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(3) Program changes must be made to and accredited by the

board, at least fourteen (14) days prior to participation, or the evaluation and accreditation of the program becomes void.

(4) Continuing education credit will be given only once for each program per participant.

(5) Records [Sponsors shall retain a file] of participant's program completion shall be retained for three (3) years.

Section 4. (1) In-state continuing education programs provided by sponsors pursuant to this subsection must meet the following standards:

(a) Educational content:

1. A statement describing the educational goals of the program;

2. Programs offered shall meet the educational needs of the pharmacist and shall be built upon the standards of practice and courses found in the curricula of accredited schools and colleges of pharmacy; and

3. Each program shall be designed to explore one (1) subject or standard, or a group of closely related subjects of standards.

(b) Methods of delivery:

1. The method of delivery of a course shall be determined by giving appropriate consideration to such factors as educational content, objectives and composition of the audience;

2. The method of delivery must encourage active participation and involvement on the part of the pharmacist; and

3. The provider shall give a posttest to determine that the pharmacist has achieved the stated educational goals of the program.

(c) Program faculty qualification:

1. The program faculty for a program shall be competent in the subject matter and qualified to present based upon experience;

2. The provider shall use an appropriate number of faculty for each program; and

3. The provider shall use adequate personnel to assist with administrative matters and shall have competencies outside content areas in cases where the method of delivery requires technical or other special expertise.

(d) The facilities used shall be appropriate and adequate to the content, method of delivery, size of the audience and shall promote the attainment of the objectives of the program.

(2) Sponsors shall:

(a) Apply for approval every two (2) years;

(b) Submit to the board, no later than December 31 of each year, a list of continuing education programs provided during the year;

(c) Maintain records of a participant's program completion for no less than four (4) years;

(d) Afford participants an opportunity to evaluate the quality of each program. The evaluation shall include the following elements:

1. Delivery of the presentation;

2. Use of supportive instructional material; and

3. Organization of the instruction.

(e) Retain either the summaries or a summary of the evaluations provided by the participants for not less than four (4) years.

(3) Submission of false or fraudulent statements concerning continuing education programs, or failure to maintain standards, subject the sponsor to revocation of board approval. [Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit an application containing such information as the board may require on forms provided by the board. Pharmacists must keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years and submit such certification to the board on request.]

(2) Submission of fraudulent statements or certificates concerning continuing pharmacy education will subject the pharmacist to revocation or suspension of license as provided in KRS 315.121(1).

Section 5. Out-of-state continuing education programs must be:

(1) Approved by the American Council on Pharmaceutical Education; or

(2) Approved by the Board of Pharmacy in the state given, provided that the other Board of Pharmacy accepts Kentucky Board of Pharmacy approved programs for continuing education. [Pharmacists are responsible to submit on forms provided by the board a list of accredited continuing pharmacy education programs with their annual

renewal as scheduled in Section 1 of this administrative regulation. If any licensee shall fail to submit a list of continuing pharmacy education programs by the 1st day of February, the executive director of the board shall notify such licensee at his last known address that his license may be suspended. A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for such reasons as illness, incapacity, or other extenuating circumstances. A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date is exempt from the continuing pharmacy education provisions.]

Section 6. A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date is exempt from the general continuing pharmacy education provisions. [All pharmacists shall keep the board informed of their correct addresses.]

Section 7. Continuing education credit awarded for a program shall be based upon the number of contact hours:

- (1) One (1) contact hour is equivalent to not less than fifty (50) minutes of instruction;
- (2) One (1) CEU is equivalent to ten (10) contact hours; and
- (3) Consecutive hours of continuing education shall not be totaled using a fifty (50) minute hour. [CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.]

Section 8. Continuing education shall be awarded for the following:

- (1) Advanced cardiac life support - fifteen (15) hours, not more than every three (3) years;
- (2) Basic CPR certification - eight (8) hours, no award for recertification;
- (3) University of Kentucky Nontraditional PharmD Option - fifteen (15) hours for satisfactory completion of one (1) class; and
- (4) Academic graduate programs in health-related fields - fifteen (15) hours for satisfactory completion of coursework certified by the Dean and Chair of the Department or Committee.

Section 9. If a pharmacist fails to renew his license to practice pharmacy, for any reason, for one (1) to five (5) years, the license may be renewed upon proper application and upon demonstrating to the board that the applicant has completed the continuing education required by this administrative regulation and applicable general law.

(2) A pharmacist that has failed to renew his license for more than five (5) years, who has not been licensed in another jurisdiction and actively engaged in the practice of pharmacy as defined in that jurisdiction, shall be required to take and successfully pass:

(a) The North American Pharmacist Licensure Examination (NAPLEX); or

(b) The Pharmacists Applied Knowledge and Judgment Assessment (PAKJA). [an acceptable continuing education program. The board may require such an applicant to demonstrate that he has completed a maximum of seventy-five (75) hours of continuing education. However, under no circumstances, shall such an applicant be required to complete more than fifteen (15) hours of continuing education for each year the applicant failed to renew his license. The board, in the alternative, may renew a license of a pharmacist who has failed to renew his license upon proper application and upon successful completion of an acceptable examination.]

MELINDA C. JOYCE, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: August 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 4 p.m. on October 27, 1998, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 this proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All pharmacists and continuing education providers.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Annual registrations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for registration as a provider, elimination of the requirement for submission with renewal.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that costs for the board associated with the implementation of continuing education requirements should decrease.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in increased costs for the Board as a result of increased paperwork.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

VOLUME 25, NUMBER 4 – OCTOBER 1, 1998

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

201 KAR 2:030. License transfer.

RELATES TO: KRS 315.191(1)(c), (d), (i)

STATUTORY AUTHORITY: KRS 315.191(1)(a), (c), (d), (i), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 requires the board to establish conditions for licensure by reciprocity. This administrative regulation establishes conditions, forms, and examination, for licensure by reciprocity.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Pharmacy.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if:

(1) The requirements for initial licensure of the jurisdiction that granted his license met or exceeded Kentucky requirements for licensure at the time the license in the other jurisdiction was granted;

(2) The applicant has not failed a board licensure examination;

(3) The applicant has:

(a) Completed and certified the "NABP Preliminary Application for Transfer of Pharmaceutic Licensure" form; and

(b) Received an "NABP Official Application for Transfer of Pharmaceutic Licensure";

(4) The applicant is in good standing in the jurisdiction from which he has applied;

(5) The applicant has successfully completed an examination in jurisprudence; and

(6) The applicant has met the requirements established by the provisions of this administrative regulation.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmaceutic Licensure, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date and place of birth, and current age;

(4) Social Security number;

(5) Citizenship;

(6) Gender;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received;

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses obtained by:

(a) Score transfer; and

(b) Licensure transfer;

(13) Practice and employment, including nonpharmacist employment, from initial licensure to date of filing application; and

(14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

(1) Is an active member of the NABP; and

(2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall appear in person before the board or a member thereof for the jurisprudence examination, however, effective January 1, 1999, an applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application shall take a practical examination.

Section 7. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(3).

Section 8. Incorporation by Reference. (1) "NABP Preliminary Application for Transfer of Pharmaceutic Licensure", is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m.

MELINDA C. JOYCE, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: August 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 2:30 p.m. on October 27, 1998, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Only those pharmacists who request license transfer into the Commonwealth. It is unknown the number of pharmacists who will elect to move into the Commonwealth.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None other than the cost of licensure as a pharmacist which is required of everyone who is actively engaged in the practice of the profession in Kentucky.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None other than those required of all licensees.

2. Second and subsequent years: None other than those required of all licensees.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Application renewals.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for license.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that pharmacists will be available to the citizens on an expedited or fast-track basis for licensure.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in a shortage of pharmacists in the Commonwealth at times during the year when pharmacists move into and out of the jurisdiction.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All pharmacists who elect this process are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)**

201 KAR 2:040. Registration of interns.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is authorized by KRS 315.050(1) to determine the minimum experience internship required to qualify for examination as a registered pharmacist. KRS 315.191 also authorizes the board to establish requirements and standards for educational, technical and professional qualifications of applicants for license to practice pharmacy. This administrative regulation is to assure uniformity of the minimum experience internship.

Section 1. Every person who desires to become a pharmacy intern in Kentucky shall register as an intern with the Kentucky Board of Pharmacy. No credit for internship shall be recognized by the board for periods prior to such registration. To qualify for registration, a person shall have been accepted to an accredited college or school of pharmacy recognized by the board [successfully completed two (2) full years attendance at an accredited college or university], and shall furnish proof of such to the executive director of the board prior to the registration.

Section 2. The practical experience required prior to licensure

shall be referred to as internship. The minimum internship required as to a prerequisite for licensure examination shall be 1,500 hours; not more than forty-eight (48) hours of internship may be allowed for credit in any one (1) calendar week.

Section 3. The board shall ~~furnish application blanks and~~ issue a numbered registration identification card to each applicant who meets the requirements for registration as a registered intern upon receipt of a completed registration form and the fee. The registered intern shall have his registration identification card in his possession at all times when on duty and it shall be exhibited by the holder upon request of any member of the board or its authorized agents.

Section 4. (1) Internship registration shall be limited to those persons who are actively engaged in meeting the academic or practical experience requirements for licensure examination. No person who terminates the educational requisites is entitled to the privileges of internship registration, with the exception of any hardship case given written approval by the board.

(2) No person unregistered with the board as a pharmacy intern shall take, use, or exhibit the title of pharmacy intern, pharmacy apprentice, pharmacy extern, or any term of similar or of like import.

(3) Internship, other than the internship awarded by completion of academic coursework, shall be credited only when it has been obtained in a pharmacy, or when approval for a nontraditional internship has been granted by the board prior to commencement of the nontraditional internship. The maximum hours that may be approved for a nontraditional internship is 400. Interns who receive board authorization for a nontraditional internship shall provide to the board at least a 500 word essay describing their experience and its relation to the practice of the profession prior to receiving internship credit. [acceptable to the board for that purpose.]

(4) Internship may be acquired only under the supervision of a preceptor. The preceptor, the pharmacy intern's supervising pharmacist, must have been licensed by the board for at least one (1) year. Effective August 1, 2000, the preceptor shall be required to be either a community-based faculty member of the University of Kentucky or meet the standards established by the University of Kentucky for community-based faculty. He must be actively engaged in the practice of pharmacy full-time in the pharmacy where the pharmacy intern is to obtain his internship. A preceptor may supervise only one (1) [pharmacy] intern at a time.

Section 5. An [A-pharmacy] intern having served part or all of his time in a pharmacy outside the state shall be given credit for the same, when affidavit(s) of his [said] employment is made by his preceptor(s) showing the exact time and dates served, and when [same is] attested by the Board of Pharmacy of that state. In such cases, their requirements for internship must be comparable and acceptable to the Kentucky board.

Section 6. Internship report forms may be obtained from the board and shall be filed in accordance with printed instructions on such forms.

Section 7. Hours of internship on an hour-per-hour credit basis for practice of pharmacy experiences shall be awarded for the successful completion of a doctor of pharmacy degree when documented and certified by the accredited school or college of pharmacy when the student receives a grade of "C" or its equivalent for each course. Until January 1, 2000, 960 hours of internship shall be awarded for the successful completion of a bachelor of pharmacy degree.

MELINDA C. JOYCE, President
CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: August 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 3 p.m. on October 27, 1998, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All interns who desire licenses in the Commonwealth. It is unknown the actual number of interns.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None other than those required of all interns.

2. Second and subsequent years: None other than those required of all interns.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Annual registrations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for registration.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that interns will receive practical education in a uniform manner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in a disparity in the education and training of pharmacy students.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All interns are treated identically by this amended administrative regulation.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.035, 315.050, 315.060, 315.110(1), (2), 315.191(2), 315.195, 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation provides [is to provide] reasonable fees for this agency to perform all the functions for which it is responsible and to operate within its budget. All monies are held in a trust and agency fund to the credit of the board.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates and the issuance and renewal of licenses and permits:

(1) Application for a registered pharmacist license by examination including a license issued as a result thereof but does not include any direct costs for test materials and supplies - \$150.

(2) Retake examination as described in 201 KAR 2:020 - \$100.

(3) Application and initial license for a [registered] pharmacist license by license transfer [reciprocity including license issued as a result thereof] - \$250.

(4) Certifying the grades of a licentiate of Kentucky to the licensing agency of another state - ten (10) dollars.

(5) Annual renewal of a pharmacist license - seventy (70) dollars.

(6) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars.

(7) Annual renewal of an inactive pharmacist license - ten (10) dollars.

(8) Pharmacy intern certificate valid six (6) [four (4)] years - twenty-five (25) dollars.

(9) Duplicate pharmacist license certificate - twenty (20) dollars.

(10) Application for a permit to operate a pharmacy - \$100.

(11) Renewal of a permit to operate a pharmacy - \$100.

(12) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars.

(13) Change of location or change of ownership of a pharmacy permit - seventy-five (75) dollars.

(14) Application for a permit to operate as a drug wholesaler or manufacturer - \$100.

(15) Renewal of a permit to operate as a drug wholesaler or manufacturer - \$100.

(16) Delinquent renewal penalty for a permit to operate as a drug wholesaler or manufacturer - \$100.

(17) Biennial continuing education provider status - \$200.

MELINDA C. JOYCE, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: August 26, 1998

FILED WITH LRC: September 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 3:30 p.m. on October 27, 1998, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All applicants for license transfer, interns, wholesalers and manufacturers and continuing education providers who desire licenses in the Commonwealth. It is unknown the actual number of each of these persons.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Annual registrations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for registration.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that registrations for interns will be consistent with the educational process and will not require extensions, continuing education providers will maintain records rather than the board and those wholesalers and manufacturers will be encouraged to renew in a timely manner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in increased costs for the board as a result of increased paperwork and investigation and complaint processing. A disparity in the education and training of pharmacy students.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

**JUSTICE CABINET
Department of Juvenile Justice
(Amendment)**

505 KAR 1:040. Policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, *United States of America v. Commonwealth of Kentucky*,

et al., Civil Action No. 3:95 CV-757-S (W.D.KY. 1995), EO 96-1576

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.50, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, EO 96-1576, *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:95 CV-757-S (W.D. 1995)

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 15A.160 authorizes the Justice Cabinet to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program, and to implement currently required provisions of a consent decree entered December 4, 1995, by the United States District Court of Kentucky in *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:CV-757-S (W.D.KY. 1995) and EO 96-1576.

Section 1. Incorporation by Reference. (1) The Justice Cabinet Policy and Procedures Manual, 1998 Edition, is incorporated by reference.

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

RALPH E. KELLY, Ed.D.

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 11, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 29, 1998, at 9 a.m. in the conference room at the Department of Juvenile Justice Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 is made for a transcript. 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: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice. The implementation of the policies for compliance with the consent decree entered into with the Department of Justice will affect the 13 residential facilities, 17 group homes and 18 day treatment programs operated or contracted by the Department for Social Services, Division of Youth Services now Department of Juvenile Justice via EO 96-1576 signed November 27, 1996.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas

served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: The only change in compliance, reporting and paperwork requirements for the first year is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to The Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's constitutional rights as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Juvenile Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice 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: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed regulations are currently in effect via EO 96-1576.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(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. This administrative regulation sets forth the policies and procedures of all offices of The Department of Juvenile Justice and is effective statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Consent decree entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of *United States of America v. Commonwealth of Kentucky et al.* Civil Action No. 3:95-CV-757-S (W.D.KY 1995) and EO 96-1576 signed November 27, 1996.

2. State compliance standards. The state has issued policies that comply with mandates of the juvenile services consent decree relating to protection and rights of committed juveniles.

3. Minimum or uniform standards contained in the federal mandate. The consent decree contained specific requirements to improve conditions for youth housed in 13 residential treatment facilities operated or contracted by the cabinet, now the Department of Juvenile Justice, via EO 96-1576

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. These administrative regulations will not impose stricter standards, or additional or different responsibilities or requirements.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:700. Standards for admission to teacher education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to a teacher education program and is not required by federal law or regulation.

Section 1. Selection and Admission to Teacher Education Programs. In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated under 704 KAR 20:696, each teacher education institution shall develop a plan of selection and admission of teacher candidates for the teacher education program, which shall include:

(1) Tests to measure general academic proficiency;

(2) Review of the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680; and

(3) A declaration signed by each teacher candidate affirming a

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commitment to upholding the code and acknowledging awareness of information required for state certification.

Section 2. Tests to Measure General Academic Proficiency. (1) The teacher education institution shall determine whether each applicant exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A student who plans to apply for admission to a teacher preparation program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as a teacher without first providing evidence of meeting the general academic proficiency requirement.

(3) The teacher education institution shall implement one (1) or more of the following plans:

(a) Plan I. A minimum composite score of 21 [~~on the Enhanced American College Test (ACTE), or 19~~] on the American College Test (ACT);

(b) Plan II. The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;

(c) Plan III. Preprofessional Skills Test (PPST) results, a minimum ~~either on the [ef]:~~

1. Written format:

a. Reading 173;

b. [2:] Mathematics 173; and

c. [3:] Writing 172;

2. Computer-based format:

a. Reading 320;

b. Mathematics 318; and

c. Writing 318;

(d) Plan IV. Graduate Record Examination (GRE) General Tests. Each institution shall establish a minimum passing score on the GRE for admission when the entry into the teacher preparation program is at the graduate level. In addition, each institution shall administer or require a writing assessment and verify the minimum writing competency for each applicant; [Records Exam (GRE) results, a minimum of 400 in each component (verbal, quantitative, analytical); or]

(e) Plan V. SAT I, a minimum composite score of 910 and writing assessment; or

(f) Plan VI. An institution of higher education may use an alternate test if the following guidelines are met by the institution requesting the alternative:

1. Provide evidence that the alternative test score covers the areas of written communication, reading, and computational skills;

2. Demonstrate that the passing score for a student on the alternative test is equivalent to passing score on the ACT [AGTE], PPST, Praxis, or GRE;

3. Provide a regular review (at least every third year) to show that alternative test passing scores remain equivalent to state required test passing scores; and

4. Describe procedures for the admission of a student who transfers from another teacher education program in the state.

Section 3. Annual Report. Each teacher education institution shall report annually to the Education Professional Standards Board the scores of the admission tests for each applicant, including scores for an applicant denied admission.

JOSEPH E. EARLY, Acting Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: July 22, 1998

FILED WITH LRC: September 10, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 23, 1998, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1998, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hear-

ing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Interim Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, Fax: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Marilyn Troupe

(1) Type and number of entities affected: 26 institutions of higher education offering teacher education 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 additional costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: each institution will be required to report the assessment criteria used for admission.

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No increased cost.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: This amendment provides alternatives for the institutions of higher education to use when measuring general academic proficiency skills of applicants to teacher preparation programs.

(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: 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: No

(11) TIERING: Is tiering applied? No. All teacher education programs will have access to the multiple alternatives of assessments used as criteria for admission of students into the teacher education programs.

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FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(Amendment)

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

RELATES TO: KRS 157.615, 157.650, 157.655, 157.660, 157.665

STATUTORY AUTHORITY: KRS 157.615, 157.655(3), 157.660(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the commission to promulgate administrative regulations necessary for the orderly conduct of its affairs, which includes the education technology funding program. KRS 157.660(3) requires the commission to promulgate administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years. This administrative regulation establishes the procedures and guidelines for determining the eligibility and level of participation for a local public school district, for making an offer of assistance to a school district, for verifying a local public school district funding match, and for the accumulation of credits by a local public school district that maintains its eligibility.

Section 1. Sources of Local Matching Funds. A local public school district shall match the state offer of assistance from:

(1) Available state, local district, and federal funds not otherwise restricted by the appropriate governing agency; (its general fund);

(2) The proceeds of a revenue bond or note that is:

(a) Issued on behalf of a district to purchase technology equipment supported by the district's general fund; and

(b) To be retired within three (3) years from the date of issuance;

(3) A vendor or third party lender lease;

(4) A grant from a private source; ~~or~~

(5) Interest earned by a district on a school building construction account, if the interest is not already committed for expenditure on the construction project; or

(6) Interest earned on the "Education Technology Fund" account.

Section 2. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to a local school district for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by this section.

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify an eligible district in writing of:

(a) The amount the district is entitled to receive; and

(b) The conditions KRS 157.655(1) and 157.660(2) requires the district to meet if it accepts the offer of acceptance.

Section 3. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance, it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance shall be granted by the executive director.

(2) The local school district shall provide to the commission a copy of its board's minutes reflecting acceptance of an offer of assistance. Upon acceptance of an offer of assistance, a local school district shall establish an "Education Technology Fund", which shall bear interest on the balance in the fund. The interest received on the fund shall be applied to meet educational technology needs in the school district. The district shall provide the commission evidence of a journal entry

certifying local matching funds in the technology fund.

DR. ROBERT TARVIN, Executive Director

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 14, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 27, 1998, at 1 a.m. in Room 267, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by October 20, 1998, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 264, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-5582, FAX (502) 564-2653.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Robert Tarvin, Executive Director

(1) Type and number of entities affected: 176 public school 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 of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General 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: Should permit local school districts to have access to more state funds for technology.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not appropriate.

(8) Assessment of expected benefits:

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

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

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(10) Any additional information or comments: Change will more effectively utilize federal funds available for technology in public school districts.

(11) TIERING: Is tiering applied? No. Under this administrative regulation, all school districts will be allowed to use federal funds for their local match. However, because only the neediest school districts are eligible for the federal funds, these districts will be more affected.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:070. Fees for service.

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(2) authorizes the Commissioner, Department of Vocational Rehabilitation, to promulgate administrative regulations governing fees for vocational rehabilitation services to individuals and entities other than applicants or eligible individuals [agency clients]. This administrative regulation implements that provision.

Section 1. Definition [Definitions]. [(1) "Agency" or] "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

[(2) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.]

Section 2. Carl D. Perkins Comprehensive Rehabilitation Center's Fees for Services. (1) Except as provided in this section, rates shall be determined by center utilization, budget expenditures and comparable fees charged by other vendors.

(2) The Carl D. Perkins Comprehensive Rehabilitation Center's fees for services shall be:

- (a) Vocational evaluation - \$132 per day.
- (b) Mobile vocational evaluation - \$100.
- (c) Work hardening/conditioning fees based on prevailing market rates in the Kentucky, West Virginia area.
- (d) Vocational Adjustment Program - \$48 per day.
- (e) Vocational training tuition - \$43 per day or \$150 per month.
- (f) Psychological services based on prevailing market rates in the Kentucky, West Virginia area.
- (g) Psychiatric services - Medicare rate plus ten (10) percent.
- (h) Physical or occupational therapy services - Medicare rate plus ten (10) percent.
- (i) Speech/language services fees - prevailing market rates in the Kentucky, West Virginia area.
- (j) Audiological services - Medicare rate plus ten (10) percent.
- (k) Other outpatient therapy per session - \$76.
- (l) Brain injury program - \$600 per day.
- (m) Physical restoration - \$190 per day.
- (n) Dormitory housing - \$31 per day.
- (o) Medical housing - \$200 per day.
- (p) Nonresidential meals - state per diem rates.
- (q) Wellness maintenance program to include aquatics, aerobics and strengthening;
- (r) 1. Initial assessment fee (one (1) time) - ten (10) dollars;
- 2. Monthly wellness maintenance fee - thirty (30) dollars.
- (3) Fees shall include all administrative costs, reports and follow-ups.

Section 3. Rehabilitation Technology. (1) Fees for driver evaluation, driver education, home modification and occupational therapy services shall be based on prevailing market rates in the Kentucky, West Virginia area.

(2) For individuals who desire or need driver evaluation, driver training, occupational therapy services or vehicle modification studies

by a department [an agency] specialist, the following fees shall apply:

- (a) Evaluation automobile (five (5) hour minimum) - \$50 per hour.
- (b) Evaluation van (ten (10) hour minimum) - \$50 per hour.
- (c) Driver training (one (1) hour minimum) - \$50 per hour.
- (d) Occupational therapy services (one (1) hour minimum) - \$50 per hour.
- (3) Fees shall include all administrative costs, reports and follow-up.

Section 4. Fee for [Agency] Staff Services. A fee of \$100 per hour may be charged for [agency] staff services.

Section 5. The department may negotiate a lesser fee with state/federal programs or a volume discount for private providers.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: August 24, 1998

FILED WITH LRC: September 3, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this department by October 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 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: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440, (502) 564-6745 FAX.

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Individuals who are not eligible for rehabilitation services from the department will be affected. Program capacity should be no more than 15 to 20 people.

(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. No other service provider offers comprehensive rehabilitation services.

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

1. First year following implementation: Reports sent to purchasers of service will increase. None. There is no similar program in the local area.

2. Second and subsequent years: All administrative costs will be included in the fee for service. None

(3) Effects on the promulgating administrative body: Fees should

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reduce indirect cost to taxpayers.

(a) Direct and indirect costs or savings: Any fees received will be used to offset indirect costs.

1. First year: Not known.

2. Continuing costs or savings: Not known.

3. Additional factors increasing or decreasing costs: Not known.

(b) Reporting and paperwork requirements: Reports are not required. Records will be kept for the benefit of participants.

(4) Assessment of anticipated effect on state and local revenues: The fees generated may offset some of the indirect costs associated with maintaining the facility.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees should generate revenue to implement 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:

(a) Geographical area in which administrative regulation will be implemented: Better utilization of the facility should result.

(b) Kentucky: Service fees will generate revenues needed for the program without additional costs to the taxpayer.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Information received from the local community indicates an interest in maintaining wellness through a fitness program involving aerobics and hydrotherapy. No similar service is available in the community. The Carl D. Perkins Comprehensive Rehabilitation Center has the facilities and the staff to conduct a wellness program under proper medical supervision. The program will be especially helpful for individuals who have experienced a work related injury and want to maintain fitness to avoid further strain or injury.

(11) TIERING: Is tiering applied? No. This fee for service is unique to the Carl D. Perkins Comprehensive Rehabilitation Center.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (Amendment)

787 KAR 1:200. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.380(3) requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1998 [1997], and prior to July 1, 1999 [1998]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1997 [1996] was 19,426,207 [18,934,441];

(2) The "average monthly employment," obtained by dividing the

total monthly employment by twelve (12), was 1,618,851 [1,577,870];

(3) The "total wages" reported by subject employers for the calendar year of 1997 [1996] was \$41,012,521,117 [38,182,050,349];

(4) The "average weekly wage" for the calendar year of 1997 [1996] for insured employment, obtained by dividing the average monthly employment into the total wages for the year and dividing by fifty-two (52), was \$487.20 [465.36];

(5) Fifty-five (55) percent of the average weekly wage of \$487.20 [465.36] for the calendar year of 1997 [1996] was \$267.96 [255.95].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1998 [1997], and prior to the first day of July 1999 [1998], shall be \$268 [256].

MARGARET WHITTET, Commissioner

SARAH JACKSON, General Counsel

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 24, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, October 22, 1998, at 9:30 a.m. at the Health Services Cabinet Auditorium, 275 East Main Street, First Floor, Health Services Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Thursday, October 15, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Sarah Jackson, General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) - 564-7916.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah Jackson

(1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1998, through June 30, 1999.

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

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

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

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

1. First year: An additional \$9.8 million paid to eligible UI recipients.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: An additional \$9.8 million paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (BCAA).

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory requirements.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determine the maximum weekly unemployment insurance benefit rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. All local government agencies could be affected, but only if they have unemployment insurance claims filed against them.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to their payment of unemployment benefits to former employees.

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

Revenues (+/-): None

Expenditures (+/-): Nondeterminable

Other Explanation: Effective July 1, 1998, the maximum weekly benefit rate will increase to \$268, an increase of \$12 per claim over the present rate of \$256. If a local government agency chooses to file and pay unemployment insurance taxes quarterly, this potential \$12 increase per claim could deplete their reserve account faster and create a deficit. If this were to occur, their tax rate would go up. If a local government agency chooses to be a reimbursing employer, where they would pay out of the reserve account dollar for dollar for every claim filed against them, their expenditures will likely increase.

LABOR CABINET

Department of Workers' Claims (Amendment)

803 KAR 25:089. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS 342.019, 342.020, 342.035, 342.735 [Chapter 342]

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services,

where treatment is paid for by general health insurers. This administrative regulation regulates the fees of "physicians" as defined in KRS 342.0011(32).

Section 1. Definitions. (1) "Medical fee schedule" means the Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" is defined by KRS 342.0011(32), and may also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342; and

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) [if] Another fee schedule of the Department of Workers' Claims applies; or

(b) [does not apply, unless] A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor.

(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1998 [1994] Workers' Compensation Medical Fee Schedule for Physicians, (September 11, 1998 [~~13~~, 1996] edition), [~~Department of Workers' Claims~~] is hereby incorporated by reference.

(2) Information and material is available for public inspection and copying at the Department of Workers' Claims, [~~main, regional, and branch offices of the agency~~]:

(a) ~~Frankfort~~ - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.;

(b) ~~Louisville~~ - 410 West Chestnut Street, Suite 700, Louisville, Kentucky 40202;

(c) ~~Paducah~~ - 220B North 8th Street, Paducah, Kentucky 42001;

(d) ~~Pikeville~~ - 101 Summit Drive, Pikeville, Kentucky 41501.

(e) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday.]

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 11, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on October 21, 1998, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10:00 a.m. (ET), on October 21, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Donna Elsen Floyd, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C,

1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amendment)

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Elsen Floyd

(1) Type and number of entities affected: Injured workers, medical providers who provide care for injured workers and workers' compensation insurance carriers.

(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. No expected impact on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. No expected 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: Medical providers will be required to charge in accordance with the fee schedule for treatment of injured workers. There is no new compliance requirement, because providers have previously been required to comply with applicable fee schedules.

2. Second and subsequent years: See 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: The department's requirements will be complete once the fee schedule is effective.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The usual budget for the Department of Workers' Claims.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department is required to develop a fee schedule pursuant to KRS 342.020 and 342.035. There is no alternative in the above statutes.

(8) Assessment of expected benefits: The department will be in compliance with KRS 342.020 and 342.035, and medical providers will have an up-to-date fee schedule.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No anticipated effects on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied. The fee schedule is used for all workers' compensation injuries treated by medical providers.

807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers for cellular telecommunications services or personal communications services.

RELATES TO: KRS 100.324(1), (5), 278.020, 278.650, 1998 Ky. Acts ch. 231

STATUTORY AUTHORITY: KRS 278.020(1), 278.040(3), 278.280(1), 278.650, 1998 Ky. Acts ch. 231 sec. 4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278, 1998 Ky. Acts ch. 231, sec. 4 requires the commission to promulgate administrative regulations to establish the contents of a uniform application to construct an antenna tower for cellular telecommunications services or personal communications services in a jurisdiction that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, except for a county that contains a city of the first class. KRS 278.280(1) authorizes the commission to establish proper practices to be observed in regard to the facilities of a utility. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 prescribes procedures to be followed for a proposal to construct an antenna tower for cellular telecommunications services or personal communications services in a county containing a city of the first class which differ from those to be followed for a proposal to construct an antenna tower for cellular telecommunications services or personal communications services outside a county containing a city of the first class. This administrative regulation prescribes filing requirements and procedures to be followed in applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower for cellular telecommunications services or personal communications services.

Section 1. (1) To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in an area which is not within a county containing a city of the first class shall file with the commission the following information:

(a) All documents and information required by 807 KAR 5:001, Section[s] 8, except that the applicant shall file with the commission the original and five (5) copies of the application, and 807 KAR 5:001, Section 9(2)(a), (b), (c), (d) and (g);

(b) A copy of the utility's applications to the Federal Aviation Administration and Kentucky Airport Zoning Commission and written authorizations from these agencies as soon as they are available;

(c) A copy of the utility's application to, and authorization from, the Federal Communications Commission, if applicable;

(d) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas;

(e) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

(f) The lease or sale agreement for the property on which the tower is proposed to be located;

(g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;

(h) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures on the property on which the tower will be located;

(i) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

(j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and

sealed by a professional engineer registered in Kentucky;

(k) A map, drawn to a scale no less than one (1) inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower;

(l) A statement that every person who owns property within 500 feet of the proposed tower has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;

(n) A statement that the [local planning unit or, if none, the] county judge executive[.] has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of [its, or] his[.] right to request intervention;

(o) A copy of the notice sent to the [local planning unit or, if none, to the] county judge executive;

(p) A statement that:

1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and

2. The notices shall remain posted for at least two (2) weeks after the application has been filed;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the [zoning classification and] existing land use for the specific property involved; [and]

(s) A statement that the utility has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to colocate, including documentation of attempts to colocate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to colocate on towers designed to host multiple wireless service providers' facilities or existing structures, such as a telecommunications tower, or another suitable structure capable of supporting the utility's facilities; and

(t) A map of the area in which the tower is proposed to be located, that is drawn to scale and that clearly depicts the necessary search area within which a site should, pursuant to radio frequency requirements, be located.

(2)(a) The notices required by subsection (1)(p) of this section shall:

1. Be at least two (2) feet by four (4) feet in size; and

2. Except as provided by paragraph (b) of this subsection, state: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(b) The notice posted on the nearest public road shall state: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") near this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(c) In both posted notices, the word "tower" or "monopole" shall be printed in letters at least four (4) inches high.

Section 2. To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in a county containing a city of the first class shall file with

the Public Service Commission the following information:

(1) All documents and information required by Section 1(1)(a) through (m), (p), and (q) of this administrative regulation, except that in public notices required by Section 1(1)(l), (p), and (q), the utility shall include the following sentence: "The Public Service Commission in its review of the proposed construction shall not consider the character of the general area concerned or the likely effects of the installation on nearby land uses and values, as these matters are decided by the local planning unit";

(2) A statement that the proposal has been submitted to the planning commission of the affected planning unit, the date upon which the proposal was submitted, and a copy of all documents submitted to the planning commission;

(3)(a) If the planning commission has made its decision regarding the proposal, a copy of the final decision of the planning commission; or

(b) If the planning commission has not made its decision and sixty (60) days have passed since the submission of the proposal, a statement that;

1. Sixty (60) days have passed since submission of the proposal to the planning commission; and

2. The planning commission has not taken final action in regard to the proposal;

(4) A statement that a copy of the statement submitted pursuant to subsection (3)(b) of this subsection has been sent to the affected planning commission.

Section 3. If the planning commission rejects a proposal to construct a telecommunications antenna tower in a county containing a city of the first class, and the utility wishes to request the commission to override the decision of the planning commission, the utility shall file a statement that there is no acceptable alternative site, together with supporting evidence that includes an affidavit or other documentation regarding attempts by the utility to secure an alternative site to provide service to the area. A copy of the statement with supporting documentation shall also be sent to the affected planning commission and to those persons who, according to the records of the affected planning commission, submitted testimony to the planning commission during its review of the proposed facility.

Section 4. To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in a jurisdiction which is not within a county containing a city of the first class and which has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100 shall file with the Public Service Commission the following information:

(1) All documents and information required by Section 1(1)(a) through (m) and (p) through (t) of this administrative regulation, except that:

(a) In public notices required by Section 1(1)(p) and (q), the utility shall include the following sentences: "You may also contact your local planning commission. The Public Service Commission in its review of the proposed construction shall not consider the character of the general area concerned or the likely effects of the installation on nearby land uses and values if the local planning commission conducts a review of the proposed construction."; and

(b) No copies in addition to the original application shall be filed.

(2) All documents and information required by 1998 Ky. Acts ch. 231, sec. 2(2);

(3) A statement that:

(a) The planning commission in whose jurisdiction the construction is proposed has not officially registered a resolution to plan for and regulate the siting of antenna towers and has been sent notice as prescribed in Section 1(1)(n) of this administrative regulation; or

(b) The planning commission in whose jurisdiction the construction is proposed has officially registered its resolution to plan for and regulate the siting of antenna towers, and a copy of the completed uniform application shall be submitted to the planning commission of the affected planning unit no later than five (5) days after the date the application is submitted to the Public Service Commission.

Section 5. (1) An application or an update to an application filed

under Section 4 of this administrative regulation shall be entitled "Uniform Application: Confidential and Proprietary", and the title shall be printed beneath the case caption on the first page of the document in bold face type that is at least as large as any other type appearing on the document.

(2) The initial filing of a uniform application shall include an original and five (5) copies of an additional page which is labeled, in bold face type, "For the Public Record", and which contains the case caption and states the specific location of the proposed construction.

Section 6. A utility planning to colocate its antennas on an existing structure or to augment an existing structure to enable it to place its antennas on that structure shall file with the Executive Director and the Engineering Division of the Public Service Commission written notices of its intent to do so, rather than an application, if:

(1) The proposed augmentation, if any, of the existing structure shall not increase the height of the structure more than fifty (50) percent; and

(2) The proposed augmentation, if any, of the existing structure will not result in altering lighting requirements currently applicable to the structure.

B.J. HELTON, Chairman
LAURA DOUGLAS, Secretary
DEBORAH T. EVERSOLE, Attorney

APPROVED BY AGENCY: August 24, 1998

FILED WITH LRC: August 26, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 30, 1998 at 9 a.m. at the Public Service Commission's office, Hearing Room No. 1, 730 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Deborah T. Eversole, Staff Attorney, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Telephone: (502) 564-3490, Facsimile: (502) 564-7279.

REGULATORY IMPACT ANALYSIS

Contact person: Deborah Eversole, Staff Attorney

(1) Type and number of entities affected: 26 facilities-based cellular and personal communications utilities currently operate in Kentucky and will be affected by the proposed regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this issue were received. However, no impact of this nature is expected.

(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 impact of this nature is expected beyond that which is necessitated by the new statutory requirement of additional proceedings before planning commissions.

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

1. First year following implementation: Little, if any, increase in the cost of compliance, reporting, and paperwork requirements is expected beyond that necessitated by the new statutory requirement that utilities proposing to construct wireless telecommunications facilities file with planning commissions as well as with the Public Service Commission.

2. Second and subsequent years: See answer to (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings to the commission are expected. Regulation of tower siting will continue to be handled in the ordinary course of business.

2. Continuing costs or savings: See answer to (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required to enforce or implement this regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No economic effect on any geographical area is expected.

(b) Kentucky: No public comments were received. However, no economic effect on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of fulfilling the commission's statutory mandate that have been proposed include, on the one hand, additional filing requirements and procedures which would constitute additional burdens on applicants that do not appear to be justified. On the other hand, some commenters stated they believe no additional requirements at all should be added to the current administrative regulation. The commission concluded that the amendments it will propose are the fewest and least burdensome possible to fulfill statutory requirements and to enable the affected planning commissions, as well as the commission, to review in a timely manner relevant issues, particularly colocation and assessment of potential alternative sites. The commission also rejects the suggestion that it require only notice, rather than an application, when a utility plans to dismantle an existing tower and construct a new one in its place. The applicable statutes require the commission to conduct a review of "construction" of a tower, and contain no exception for situations where construction would follow dismantling of a tower currently on the same site. Similarly, the commission rejects the suggestion that it should not hold a hearing if a planning commission has approved a site. While the commission is concerned only with service and safety issues after planning commission approval, persons aggrieved by a planning commission decision have a statutory right to intervene in commission proceedings following the planning commission's decision. Accordingly, the law requires that these people be heard within appropriate parameters of review. Finally, the commission rejects the suggestion that it impose, by regulation, a time limit on its own review. It is not always possible to predict the time necessary adequately to review an application of this nature. The number of applications on file at the commission at any given time is unpredictable, and the facts relevant to each application are very different. They must be considered on a case-by-case basis. The commission will, however, deal with each case as expeditiously as possible.

(8) Assessment of expected benefits: Information and documents submitted pursuant to the proposed regulation will assist the Public Service Commission and affected planning commissions in determining whether construction on a proposed site is appropriate and necessary. The additional information regarding the search area and documentation of colocation attempts, if any, will be particularly helpful. In addition, the notice only procedures for colocation on, or augmentation of, existing towers will encourage utilities to colocate rather than construct new towers. Other changes will clarify necessary requirements and procedures.

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, overlap, or duplication exists.

(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? No. Tiering has not been used because the size of the utility constructing a tower is not relevant to the considerations involved in determining whether construction at a proposed site is appropriate.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: 7 CFR 273.4, 273.5, 273.7, 7 USC 2015(e), (o), 8 USC 1612(a), (b), 1613(b), 1622(b), 1641(b), PL 105-185, sec. 503 through 508 [104-208 sec. 510, PL 105-33, sec. 5302, 5306, 5562, 5563]

STATUTORY AUTHORITY: KRS 194.050(1), 7 CFR 271.4, 1998 Acts ch. 426, ch. 427, EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.~~] The Cabinet for Families and Children has responsibility to administer a Food Stamp Program. KRS 194.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

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

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

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

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

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

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

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

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

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

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

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

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

(i) An alien lawfully residing in the United States who is:

1. A veteran as defined pursuant to 38 USC 101, 107, 1101, or 1301 with an honorable discharge and not on account of alienage, who fulfills the minimum active-duty service requirements of 38 USC 5303A(d);

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

3. The spouse or unmarried dependent child of an individual described in subparagraphs 1 and 2 of this paragraph; or

4. The unremarried surviving spouse of an individual described in subparagraph 1 and 2 of this paragraph who is deceased if the marriage fulfills the requirements of 38 USC 1304;

(j) An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 USC 1382;

(k) An alien who is:

1. An American Indian born in Canada pursuant to 8 USC 1359;
or

2. A member of an Indian tribe pursuant to 25 USC 450;

(l) An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;

(m) An alien lawfully residing in the United States on August 22, 1996, who is under eighteen (18) years of age; or

(n) An alien lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 USC 101; or

1. The spouse, or an unremarried dependent child, of an individual described in this paragraph; or

2. The unremarried surviving spouse of such an individual who is deceased, as described in this paragraph.

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

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

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

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

(1) Residency. A household;

(a) Shall live in the county in which they receive benefits; and

(b) May apply for benefits in any county; [make application;]

(2) Identity.

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

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

(3) Citizenship and alien status.

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

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

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

1. In accordance with 8 USC 1612(a)(2)(A), a qualified alien described in this subparagraph shall be eligible to participate in the Food Stamp Program until seven (7) [five-(5)] years after the date:

a. He has entered the United States as a refugee pursuant to 8 USC 1157;

b. He is granted asylum pursuant to 8 USC 1158;

c. His deportation is withheld pursuant to:

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

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

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

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

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

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

b. Can be credited with forty (40) qualifying quarters pursuant to 8 USC 1645 [PL 104-193, sec. 435]; and

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

3. An alien who is lawfully residing in Kentucky and is:

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

(i) an honorable discharge and not on account of alienage, ~~and~~ (ii) who fulfills the minimum active-duty service requirements of 38 USC 5303A(d);

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

c. The:

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

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

4. An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 USC 1382;

5. An alien who is:

a. An American Indian born in Canada pursuant to 8 USC 1359; or

b. A member of an Indian tribe pursuant to 25 USC 450;

6. An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;

7. An alien lawfully residing in the United States on August 22, 1996, who is under eighteen (18) years of age; and

8. An alien lawfully residing in the United States who is a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 USC 101; or

a. The spouse, or an unmarried dependent child, of an individual described in this subparagraph; or

b. The unremarried surviving spouse of an individual described in this subparagraph.

(d) Pursuant to 8 USC 1612(a)(2)(D)(ii) [PL 104-208, sec. 510], an alien who was participating in the Food Stamp Program on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of 8 USC 1612(a)(1) [PL 104-193, sec. 402(a)(1)], as described in paragraphs (b) and (c) of this subsection, until April 1, 1997.

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

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

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

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

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

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

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

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

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

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

1. 29 USC 1501;
2. 7 USC 2015; or
3. 19 USC 2296;

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

or

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

(6) Social Security number (SSN).

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

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

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

(8) Work requirement.

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

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

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

a. A job search component; or

b. A job search training component;

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

a. 29 USC 1501 et seq.; or

b. 19 USC 2296; or

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

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

b. The Community Service Program.

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

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

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

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

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

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

5. Pregnant.

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

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

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

(d) Subsequent eligibility.

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

2. An individual who regains eligibility pursuant to subparagraph (d) 1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

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

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

any thirty-six (36) month period.

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

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

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and which has an element of possession, use or distribution of a controlled substance as defined in 21 USC 862(a), may remain eligible for food stamp benefits pursuant to 1998 Ky. Acts ch. 427.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 8, 1998

FILED WITH LRC: September 10, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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, 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: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are individuals who are alien immigrants and certain convicted drug felons. The amended administrative regulation is necessary to implement the changes to the alien eligibility criterion that are mandated by PL105-185 which amends 8 USC 1612 et seq. PL 105-185 restores food stamp benefits to certain categories of legal immigrants who were made ineligible by the 1996 welfare reform law. The drug felony provision implements the requirements of 1998 Ky. Acts ch. 427. The amendments to this administrative regulation include restoration of food stamp eligibility to: elderly and disabled lawful aliens who were residing in the United States on August 22, 1996; lawful resident aliens who are children under age 18 who were residing in the United States on August 22, 1996; and "Jay Treaty" Indians. Also, extension of food stamp eligibility was granted to Hmong and Highland Laotians who are lawful United States residents and who assisted United States personnel in operations during the Vietnam war and to their spouses, unremarried widows, and dependent children. Finally, the provisions extends the eligibility period for refugees and other qualified aliens from 5 to 7 years. The alien eligibility restorations become effective November 1, 1998. Kentucky's alien population is very small. The cabinet anticipates that the above-referenced changes to the alien eligibility requirements will affect less than 50 individuals. The number of individuals affected by the drug felony provision cannot be determined.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published, however, 1 written comment was received from the cabinet requesting the inclusion of the drug felony provisions in compliance with 1998 Ky. Acts ch. 427.

(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 was requested as a result of the Notice of Intent being published, however, 1 written comment was received from the cabinet requesting the inclusion of the drug felony provisions in compliance with 1998 Ky. Acts ch. 427.

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of intent being published, however, 1 written comment was received from the cabinet requesting inclusion of the drug felony provisions in compliance with 1998 Ky. Acts ch. 427.

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

(7) Assessment of alternative methods; reasons why alternatives

were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 8 USC 1612 et seq. and 1998 Ky. Acts ch. 427.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The individuals made eligible by the provisions of PL 105-185, which amends 8 USC 1612 et seq., and 1998 Ky. Acts ch. 427 will benefit by obtaining a nutritious diet through the Food Stamp Program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented. The individuals made eligible by the provisions PL 105-185, which amends 8 USC 1612 et seq., and Ky. Acts ch. 427 may be deprived of a nutritious diet if they are not permitted to participate in the Food Stamp Program due to the cabinet's failure to implement the laws.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100% of food stamp benefits, 50% of federal match for administrative funds, and 100% of federal enhanced funding), due to the failure to implement the federal mandates of PL 105-185, which amends 8 USC 1612 et seq. Further, the failure of the cabinet to implement the above-referenced provisions of the laws would deprive eligible aliens of a nutritional diet.

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

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

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

PL 105-185, which amends 8 USC 1612 et seq.

2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

904 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7, 7 USC 2015(d)

STATUTORY AUTHORITY: KRS 194.050, 1998 Ky. Acts ch. 426, EO 98-731 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.~~] The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. 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. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(3) [(2)] "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(4) [(3)] "Voluntary quit" means the household member voluntarily and without good cause quits a job of twenty (20) hours or more a week.

(5) [(4)] "Voluntary reduction in work effort" means the:

- (a) Household member reduces his work effort; and
- (b) After the reduction, the individual is working less than thirty (30) hours per week.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

- (a) At the initial application for food stamps; and
- (b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

- (a) The member required to register; or
- (b) The person making application for the household.

(3) Unless otherwise exempt, a person who is an excluded household member of the food stamp case, shall be required to register for work during periods of disqualification, including an:

- (a) Ineligible alien;
- (b) Individual disqualified for refusing to provide or apply for a Social Security number; and
- (c) Individual disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

- (a) A person:
 1. Younger than sixteen (16) years of age; or
 2. Sixty (60) years of age or older;
- (b) A person age sixteen (16) or seventeen (17) who is:
 1. Not a head of a household;
 2. Attending school; or
 3. Enrolled in an employment training program on at least a half-

time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Kentucky Transitional Assistance Program (K-TAP);

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who:

1. Receives unemployment compensation; or

2. Has applied for, but not yet received, unemployment compensation, if he was required to register for work with the Department for Employment Services as a part of the unemployment compensation application process;

(g) A regular participant in a:

1. Substance abuse program; or

2. Alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, if one (1) meeting student status has met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in a K-TAP grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person by completing the FSET-145, "Employment and Training Program Work Experience Program Activity Report"; [following forms:

1. J/ET-108, "Job Search Contact Report"; or

2. ET-111, "Employment and Training Program Verification Form";]

(c) Participate in a Food Stamp Employment and Training Program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) If potential employment is not unsuitable in accordance with Section 8 of this administrative regulation, report to an employer referred to by the food stamp employment and training worker or designee; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) [A household member who is exempt or completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.

(8) The food stamp employment and training worker shall explain to the food stamp applicant:

- (a) The work requirements for each nonexempt household member;
 - (b) The rights and responsibilities of the work registered household members; and
 - (c) The consequences of failing to comply.
- (8) [(9)] Each household member required to register shall be provided a FSET-101, "Food Stamp Employment and Training Program Fact Sheet". [an ET-101, "Food Stamp Employment and Training Program Fact Sheet";]

Section 3. Employment and Training Participation. (1) An individual who is [A work registrant who resides in a county offering a Food Stamp Employment and Training Program shall participate in the program based upon a priority status:

- (2) Priority status shall be determined from whether a work registrant:
 - (a) Has:
 - 1. A high school diploma;
 - 2. A general equivalency diploma (GED); or
 - 3. Not had employment in the last twelve (12) months;
 - (b) Is:
 - 1. A veteran; or
 - 2.] subject to the work requirement pursuant to 904 KAR 3:025, Section 3(8) shall be required to participate in the Food Stamp Employment and Training Program.

- (2) [(3)] A food stamp employment and training participant shall:
 - (a) Be placed in:
 - 1. Vocational Education Skills Training (VEST) Program; or
 - 2. [Education;
 - 2. Skills training;
 - 3. Job search activities; or
 - 4.] Workfare;
 - (b) If otherwise eligible, shall receive a [be reimbursed for:
 - 1. Miscellaneous expenses incurred while participating up to] twenty-five (25) dollar [dollars] per month reimbursement for miscellaneous expenses incurred while participating; and
 - [2. Dependent care expenses, in accordance with subsection (4) of this section; and]
 - (c) Complete and file with the cabinet the FSET-145, "Employment and Training Program Work Experience Program Activity Report" [department an ET-111, "Employment and Training Program Verification Form"] to be reimbursed pursuant to paragraph (b) of this subsection.

- [(4)] The child care maximum payments as specified in 904 KAR 2:017, shall not exceed:
 - (a) \$200 per month, per child under two (2) years of age; or
 - (b) \$175 per month, per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994.

(5) A participant who does not meet the criteria in subsection (2) of this section shall not be selected to participate in a food stamp employment and training component unless they insist upon participating.]

- (3) [(6)] If a participant withdraws or is terminated, voluntarily or involuntarily from the program, he shall:
 - (a) Be provided with a FSET-119 "Employment and Training Program Notification of Termination" [one (1) of the following forms:
 - 1. ET-102 Supplement A, "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" form;
 - 2. ET-114, "Notice of Termination from the Employment and Training Program"; or
 - 3. ET-116, "Notice of Voluntary Participant Termination from the Food Stamp Employment and Training Program"; and
 - (b) Complete and file the applicable form with the cabinet [department] to be reimbursed in accordance with subsection (2) [(3)](b) of this section.

Section 4. Components. (1) A county offering the Employment and Training Program shall offer the following services and activities:

- (a) VEST Program: [Educational components including:
 - 1. Literacy programs;
 - 2. Adult basic education (ABE);
 - 3. General equivalency diploma (GED); and
 - 4. Community college.

- (b) Skills training components including:
 - 1. Vocational school;
 - 2. On-the-job training; and
 - 3. Kentucky Domestic Violence Association (KDVA).
- [(c)] Job search components including:
 - 1. Job seeking skills training;
 - 2. Group job search;
 - 3. Individual job search;
- (b) [(d)] A workfare component titled the Work Experience Program (WEP).
- (2) An individual participating in WEP [the JOB search components of subsection (1)(c) of this section] shall complete and file with the cabinet the FSET-145, "Employment and Training Program Work Experience Program Activity Report". [department the following forms:
 - (a) J/ET-108, "Job Search Contact Report"; and
 - (b) ET-111, "Employment and Training Program Verification Form";]
 - (3) An individual who selects to participate [participates] in the:
 - (a) WEP component, pursuant to subsection (1)(b) [(d)] of this section, shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:
 - 1. [(a)] Accepting the offer of a work site placement [established by the Department for Employment Services]; and
 - 2. [(b)] Working at the assigned work site placement for the minimum monthly number of required hours pursuant to subsection [(3) or] (4) or (5) of this section.
 - (b) VEST Program twenty (20) hours per week.
 - (4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program table that is incorporated into this administrative regulation by reference.
 - (5) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:
 - (a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and
 - (b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program table.

Section 5. Conciliation. (1) If a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program:

- (a) He shall be sent a FSET-102 "Conciliation Contact and Request for Information" [complete and file with the department an ET-102, "Conciliation Contact and Request for Information"] form; and
- (b) A conciliation period shall be initiated.
- (2) Conciliation shall be used to:
 - (a) Determine the reason for the noncompliance; and
 - (b) Allow the participant the opportunity to resolve the problem in order to continue participation.
- (3) Conciliation shall last for fifteen (15) days and in that time the food stamp employment and training worker shall:
 - (a) Determine good cause for noncompliance; or
 - (b) Encourage the participant to resume food stamp employment and training activity; or
 - (c) Recommend disqualification for failure to comply with program requirements.
- (4) If the participant resumes food stamp employment and training activity, application of a sanction shall not be required.
- (5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where:

- (a) The work registrant has failed to comply with:
 - 1. Work registration requirements pursuant to Section 2 of this administrative regulation;
 - 2. Employment and training requirements pursuant to Section 3 of this administrative regulation; or

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(b) Pursuant to Sections 1 and 9 of this administrative regulation, the household member has voluntarily and without good cause:

1. Quit a job; or
2. Reduced his work effort.

(2) Good cause for an individual described in subsection (1) of this section shall take into consideration the circumstances beyond the control of the individual, including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency; and
- (d) Unavailability of transportation; and
- (e) ~~Inadequate child care for children who have reached age six (6) but are under age twelve (12)).~~

Section 7. Disqualification. (1) Disqualifications shall be imposed on a household member who is:

(a) A mandatory participant who fails to comply with the food stamp employment and training requirements, including work registration; or

(b) Determined to have voluntarily and without good cause quit a job or reduced the work effort pursuant to Sections 1 and 9 of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program, pursuant to subsection (1) of this section, shall be ineligible to receive food stamp benefits until the latter of:

- (a) The date the individual complies; or
- (b) The following:
 1. Two (2) months for the first violation;
 2. Four (4) months for the second violation; or
 3. Six (6) months for the third or subsequent violation.

(3) Following the minimum period of ineligibility, pursuant to subsection (2) of this section, a disqualified member shall contact the cabinet and indicate he wishes to initiate the compliance process. [

~~(a) Make reapplication for food stamps; or~~

~~(b) Request that he be added to an active food stamp case to initiate a cure for his noncompliance.]~~

(4) Ineligibility pursuant to subsection (2) of this section shall continue until the ineligible member:

- (a) Becomes exempt from the work registration; or
- (b) Serves the disqualification period pursuant to subsection (2) of this section; and
- (c) Complies with the requirements of:
 1. Work registration; or
 2. The Employment and Training Program.

(5) A disqualified household member who joins a new household shall be treated as follows:

- (a) He shall remain ineligible for the remainder of the disqualification period pursuant to subsection (2) of this section; and
- (b) His income and resources shall be counted with the income and resources of the new household; and
- (c) He shall not be included in the household size when determining the food stamp allotment.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

- (a) The applicable:
 1. Federal minimum wage; or
 2. State minimum wage; or

(b) Eighty (80) percent of the federal minimum wage if the federal or state minimum wage is not applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) The household member or worker involved can demonstrate

that:

(a) The degree of risk to health and safety is unreasonable;

(b) He is physically or mentally unsuited to perform the employment as documented by:

1. Medical evidence; or
2. Reliable information from another source;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience;

(d) Daily commuting time exceeds two (2) hours per day, not including transportation of a child to and from a child care facility;

(e) The distance to the place of employment:

1. Prohibits walking; and
2. Public and private transportation to the job site is unavailable;

(f) The working hours or nature of the employment interferes with the member's religious:

1. Observances;
2. Convictions; or
3. Beliefs.

Section 9. Voluntary Quit. (1) An individual shall not be eligible to participate in the program if:

(a) He meets the definition of:

1. Voluntary quit, pursuant to Section 1(4) [(3)] of this administrative regulation; or

2. Voluntary reduction in work effort, pursuant to Section 1(5) [(4)] of this administrative regulation; and

(b) The voluntary quit or reduction in work effort is done:

1. Without good cause; and
2. Within sixty (60) days of food stamp application.

(2) The disqualification period for an individual described in subsection (1) of this section shall be imposed pursuant to Section 7 of this administrative regulation.

(3) Good cause for leaving employment shall include criteria in Section 6 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the individual, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the individual to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the individual to leave employment;

(e) Resignation of a person under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment:

1. Of:

- a. More than twenty (20) hours a week; or
- b. In which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours; and
2. That, because of circumstances beyond the control of the household member:

- a. Does not materialize; or
- b. Results in employment of less than that listed in subparagraph 1 of this paragraph.

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit or reduction in work effort shall be verified if questionable.

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Section 10. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) An individual may begin participation in the Food Stamp Program following the voluntary quit disqualification period, pursuant to Section 7(2) of this administrative regulation, if he applies again and is determined eligible.

(2) Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation, eligibility and participation may be reestablished by:

(a) Securing new employment comparable to the job quit in terms of:

1. Salary; or
2. Hours; and

(b) Increasing the number of hours worked, to the amount worked prior to the work effort reduction and disqualification.

(3) If an individual becomes exempt from work registration, the disqualification period imposed pursuant to Section 7(2) of this administrative regulation shall end and the individual shall be eligible to apply to participate in the Food Stamp Program.

Section 11. Hearing Process. If aggrieved by an action that affects participation, a work registrant may request a hearing in accordance with 904 KAR 3:070.

Section 12. To have a reimbursement check for employment or training replaced after loss or theft, a person shall complete and file with the cabinet a PAFS-60, "Affidavit" [department an ET-112, "Affidavit"] form.

Section 13. The Community Service Program (CSP). (1) An individual who participates in CSP shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:

(a) Establishing a work placement with a public or private nonprofit community service agency;

(b) Working, at a minimum, for the community service agency the required number of hours pursuant to subsections (2) or (3) of this section;

(c) Providing verification from the community service provider of:

1. The number of hours of community service that the individual intends to perform each month; and

2. At each subsequent recertification or change in household composition, the number of community service hours that the individual actually performed during the certification period.

(2) The number of hours of community service that an individual shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program [Community Service Program] table that is incorporated into this administrative regulation by reference.

(3) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP, the monthly number of community service hours that each individual shall perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program [Community Service Program] table.

(4) Choosing to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP shall be:

- (a) Voluntary; and
- (b) Self-initiated.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) FSET-101, "Food Stamp Employment and Training Program Fact Sheet", edition 09/98, Cabinet for Families and Children;

(b) FSET-102, "Conciliation Contact and Request for Information", edition 09/98, Cabinet for Families and Children;

(c) FSET-119, "Food Stamp Employment and Training Program Notification of Termination", edition 09/98, Cabinet for Families and Children;

(d) FSET-145, "Food Stamp Employment and Training Program

Work Experience Program Activity Report", edition 09/98, Cabinet for Families and Children;

(e) PAFS-60, "Affidavit", edition 09/98, Cabinet for Families and Children; ["Food Stamp Employment and Training Program Fact Sheet" ET-101, (7/93 edition), Department for Employment Services;

(b) "Conciliation Contact and Request for Information" ET-102, (8/93 edition), Department for Employment Services;

(c) "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" ET-102 Supplement A, (7/95 edition), Department for Employment Services;

(d) "Job Search Contact Report" J/ET-108, (7/95 edition), Department for Employment Services;

(e) "Employment and Training Program Verification Form" ET-111, (7/93 edition), Department for Employment Services;

(f) "Affidavit" ET-112, (10/90 edition), Department for Employment Services;

(g) "Notice of Termination from the Employment and Training Program" ET-114, (7/95 edition), Department for Employment Services;

(h) "Notice of Voluntary Participant Termination from the Food Stamp Employment and Training Program" ET-116, (7/95 edition), Department for Employment Services;

(i) "The Community Service Program Table", (2/97 edition), Department for Employment Services;

(f) [(f)] "The Work Experience Program Table", (3/97 edition), Cabinet for Families and Children [Department for Employment Services].

(2) This material may be inspected, 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.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 10, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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, 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: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are able-bodied adults without dependents (ABAWDs) between the age of 18 through age 49 who are subject to the work requirements, pursuant to 7 USC 2011 et seq. As of May 1998, there were 811 ABAWDs statewide.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested

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as a result of the Notice of Intent being published and no written comments were received.

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100 percent federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 USC 2025(h), as amended by PL 105-33, Section 1002.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A harmful effect would result if this amendment is not implemented because of a loss of federal funds due to the failure to implement the federal mandates of PL 105-33, Section 1002, which amends 7 USC 2025(h).

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

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100 percent of food stamp benefits, 50 percent of federal match for administrative funds, and 100 percent of federal enhanced funding), due to the failure to implement the federal mandates of PL 105-33, Section 1002, which amends 7 USC 2025(h).

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

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

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2025(h) as amended by PL 105-33, Section 1002.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

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

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

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

905 KAR 1:320. Fair hearing.

RELATES TO: KRS 13B.005 to 13B.170, 45 CFR 205.10, 29 USC 794, 42 USC 12101 et seq., 2000a et seq.

STATUTORY AUTHORITY: KRS 194.050, 1998 Ky. Acts ch. 426, 57, 150, 42 USC 5106a, EO 98-731 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Under Titles IV-A, IV-B, IV-C, IV-E and Title XX of the Social Security Act,] The single state agency responsible for the program shall be required by federal regulations and statutes, 45 CFR 205.10, 1355.21(b), 1355.30(p), Parts 98 and 99, 42 USC 620 et seq., 671 et seq., and 9858 et seq., to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Community Based [Social] Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 5106a, 12101 et seq., 2000a et seq., and with 45 CFR 205.10. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children.] This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. (1) "Applicant for services" means a person who has applied for services relating to protection and permanency from the Department for Community Based [Social] Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive protection and permanency services from the Department for Community Based [Social] Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive protection and permanency services from the Department for Community Based [Social] Services.

(3) "Complainant" means the applicant for services, client, foster parent, [or] adoptive parent, or individual identified as a substantiated perpetrator of child abuse or neglect pursuant to 42 USC 5016a, who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Secretary of the Cabinet for Families and Children [Commission for Social Services] or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions

which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the individual's [client's] right to a hearing shall be displayed prominently in each Department for Community Based [Social] Services [residential treatment facility], clinical programs, day treatment center, group home, and in each Department for Community Based [Social] Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Service Complaint [Request for Fair Hearing] form, incorporated by reference herein, with the Quality Assurance Section, Office of Performance Enhancement [Branch, Department for Social Services].

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Community Based [Social] Services who provide protection and permanency services, shall have the responsibility of advising applicants, clients, foster parents, [and] subsidized adoptive parents, and individuals identified as substantiated perpetrators under 42 USC 5106a in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference, using the DSS-154, Service Complaint [Request for Fair Hearing] form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form[; incorporated by reference herein].

2. If a service complaint [request for a hearing] is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval, a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training relating to protection and permanency, provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service relating to protection and permanency with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program relating to protection and permanency against his wishes except where required by law; or

5. Discrimination against a client by department staff, who provide protection and permanency services, on account of age, sex, race, national origin, disability or religion.

(b) A foster parent shall be entitled to a hearing on the following decisions:

1. Removal of [To remove] a foster child from one (1) foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents and the foster parents have appealed such findings in accordance with 42 USC 5106a;

2. Denial of [To deny] foster parents' access to foster parent training provided and scheduled by the department;

3. Closure of [To close] the foster home;

4. [Foster parents are not entitled to a fair hearing if:]

a.] Sexual abuse or sexual exploitation by the foster parents is substantiated;

5. [b.] Substantiation of physical abuse of a child [or spouse] war-

ranting the removal of the victim;

6. [e.] Neglect by the foster parents is substantiated and the foster parents have appealed such findings in accordance with 42 USC 5106a;

(c) Foster parents are not entitled to a fair hearing if:

1. [;]

d.] There is presence of a serious physical or mental illness which impairs or precludes adequate care of the child by the foster parents;

2. [e.] Foster parents are convicted of a felony offense; or

3. [f.] Foster parents have not had a placement within five (5) years of the approval date.

(d) [e.] Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for [a-Title IV-E] adoption assistance [subsidy] for a special needs child pursuant to 42 USC 671 et seq. are entitled to a hearing for:

1. Failure of the department staff who provide protection and permanency services to advise the adoptive parents of the availability of the adoption assistance for special needs children; and

2. Failure to provide [the Title IV-E] eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.

(5) Individuals who are found to be substantiated perpetrators of child abuse or neglect shall be given certified notification of their right to appeal the findings of the investigation.

(6) The following issues shall not be considered through the hearing procedure described herein:

(a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;

(b) Any complaint related to a court case involving an individual found by the Cabinet for Families and Children to be a substantiated perpetrator of child abuse or neglect, where evidence to support the substantiation of child abuse or neglect has been presented and the court has not made findings that the individual did not commit child abuse or neglect;

(c) A complaint that has not been filed in writing with the Quality Assurance Section [Branch];

(d) [e.] A complaint that has been abandoned by failure of the complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;

(e) [d.] A client complaint involving services or discrimination against a contract agency;

(f) [e.] Discrimination practices in relation to departmental personnel policies and procedures regarding protection and permanency services. These grievances shall be handled per instructions in the personnel manual; and

(g) [f.] A report or investigation of child abuse or neglect, where the abuse or neglect was found to be unsubstantiated or when the findings are substantiated, but the perpetrator does not request a fair hearing. [and adult abuse or neglect.]

Section 3. Service Complaint. [Request for Hearing:] (1) The complainant or legal guardian shall sign the complaint [request] and submit it to the Quality Assurance Section [Branch]. Upon request, departmental staff who provide protection and permanency services shall assist individuals in preparation and submission of a service complaint form. [request for hearing:] Staff shall not assume responsibility for mailing the service complaint form. Complaints [request-Requests for hearing] shall be in writing or filed on the DSS-154, Service Complaint [Request for Hearing] form and contain:

(a) Specific allegations or complaints against the department staff responsible for providing protection and permanency services;

(b) Name of the staff person, or persons involved if known;

(c) Circumstances under which the alleged act occurred; and

(d) Date and place of alleged act.

(2) Complaints [Requests] shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services or notice that a complaint of child abuse or neglect has been substantiated. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the complaint [request] is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Com-

missioner of the Department for Community Based [Social] Services, or designee.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Section [Branch] shall notify:

1. The complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled;

2. ~~[-:] The appropriate service region administrator [family services district manager] or designee [shall also be notified] of the receipt of the complaint [request] and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.~~

~~[2. The juvenile services specialist shall arrange a meeting with the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, Re-ed programs, group homes or day treatment programs.]~~

(b) The local resolution facilitator contacts the complainant to:

1. Clarify the issues of the complaint;

2. Determine if the complainant wishes to participate in the local resolution process; and

3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Section supervisor [Branch Manager] immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Section supervisor [Branch Manager] and choose:

1. To request that the complaint be withdrawn; or

2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

1. Interviews with the complainant and named Department for Community Based Services [DSS] staff;

2. Interviews with other involved parties; and

3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(3) ~~[(4)] The service region administrator [family services district manager] or his designee [or the juvenile services specialist] shall forward to the Quality Assurance Section [Branch], in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the service complaint [request for hearing]. The report shall contain the information necessary to document the complainant's satisfaction with the resolution of his complaint or, if the complaint is not resolved, information necessary to move the complaint to the next level. [:~~

~~(a) Nature of the complaint;~~

~~(b) Date of resolution conference;~~

~~(c) Persons present at the conference; and~~

~~(d) A specific statement of any issues not resolved.]~~

~~(4) [(5)] If the complaint is resolved, the complainant shall sign an acknowledgment to that effect [be attached to the report]. A copy of the local resolution report shall be sent to the complainant and involved staff.~~

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Section [Branch] to conduct a hearing. The hearing shall be held within sixty (60) ~~[thirty (30)]~~ days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the Department for Community Based Services [DSS] staff involved in the complaint and their representatives, and Cabinet Office of the General Counsel shall be given twenty (20) days written notice prior to the hearing. The hearing officer's notice shall comply with KRS 13B.050(2)(3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

(a) The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

(c) That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

(d) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses; and

(e) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.

(4) Attendance at the hearing shall be limited to:

(a) The complainant and representatives;

(b) Staff involved in the complaint and their representatives;

(c) The department's attorney;

(d) A representative of the department;

(e) A person to operate the recording equipment;

(f) Witnesses called by either the complainant or staff; and

(g) The hearing officer.

(5) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. Facts relevant to the issue shall be received.

(a) The hearing officer shall open the hearing by:

1. Describing the purpose of the hearing;

2. Explaining the role of the hearing officer; and

3. Introducing parties to the hearing.

4. The hearing officer may direct or grant a continuance for good cause shown.

5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.

(b) The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.

(c) Burden of proof shall be assigned in accordance with KRS 13B.090(7). ~~(The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.)~~

~~(d) The ultimate burden of persuasion is met by a preponderance of evidence. [Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.]~~

~~(e) Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.]~~

~~(f) [(f)] The hearing officer may, if necessary to secure full information on the issue:~~

~~1. Postpone the hearing;~~

~~2. Examine each party who appears, and his witnesses; and~~

~~3. Take any additional evidence which he deems necessary including excerpts from the case record.~~

~~(f) [(g)] The hearing officer shall advise the parties that a decision shall be rendered within thirty (30) days from the close of the hearing. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.~~

~~(g) [(h)] Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the official record.~~

Section 5. Hearing Officer's Recommended Order. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order with the Quality Assurance Section [Branch]. The

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order shall comply with KRS 13B.110 and at least contain:

- (a) Statement of the complaint;
 - (b) Persons present at the hearing, including witnesses;
 - (c) Findings of fact based solely on the evidence introduced at the hearing;
 - (d) Conclusions of law as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;
 - (e) Recommendations as to action to be taken on the complaint; [and]
 - (f) Directions for the filing of exceptions; and
 - (g) Other issues identified by the hearing officer shall be addressed separately. [Other issues identified by the hearing officer shall be addressed in a separate memorandum.]
- (2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.
- (3) Within twenty (20) days after receipt of the hearing officer's recommended order by the Quality Assurance Section [Branch], the commissioner, or designee, shall render a final order on the complaint. The final order shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:
- (a) Statement of the complaint;
 - (b) Findings of fact and conclusion of law with applicable statutes, policies, procedures and practices in regard to the complaint; [and]
 - (c) Decision and action to be taken based on findings of fact; and
 - (d) Statement of appeal rights.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions of law and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the [appropriate assistant] Director for the Division of Protection and Permanency [family services or residential services] requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 and shall be available at the Frankfort office of the Quality Assurance Section [Branch] at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regulation if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Section [Branch] to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

- (a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and
 - (b) Recommendations as to action to be taken on the complaint.
- (3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:
- (a) Statement of the appeal; and
 - (b) Decision and action to be taken.

Section 9. Appeal Process of the Department of Juvenile Justice (DJJ). The Internal Investigations Unit (IIU) of the Justice Cabinet has responsibility for conducting investigations of abuse and neglect of residents by staff in the residential treatment facilities and group homes operated by the DJJ. The appeal process of substantiated abuse and neglect findings is as follows:

(1) Notification.

(a) When an investigation by the IIU has a finding of substantiated, the employee named as perpetrator shall be notified by certified letter. The notification shall include:

1. The investigation report with the names of the juveniles involved as witnesses removed.

2. The Substantiated Finding Appeals Request Form to appeal the substantiated finding;

3. The perpetrator shall be given three (3) working days from the receipt of the notification in writing, not to include the date of receipt, to appeal the finding.

(2) Hearing process:

(a) The hearing shall be scheduled within ten (10) working days of the receipt on the appeal, not to include the day the appeal is received.

(b) The perpetrator shall be notified of the time and place of the hearing.

(c) The perpetrator may be represented by counsel and may present written documents as evidence, but may not present witnesses.

(d) The IIU staff who conducted the investigation shall be present to present the investigation and answer questions of the hearing officer.

(e) A determination of whether probable cause exists to alter the finding or sustain it, shall be made within five (5) working days of the appeals hearing.

(f) The perpetrator shall be notified in writing of the decision and the reason for the decision.

(g) Timelines in this appeals process may be adjusted by mutual agreement of the perpetrator, IIU investigator, and hearing officer.

Section 10. [Material] Incorporated by Reference. (1) DCBS-154, "Service Complaint Form", July, 1998, Cabinet for Families and Children, is incorporated by reference.

(2) The "Substantiated Finding Appeals Request Form", September 1998, Justice Cabinet, is incorporated by reference.

(3) This material [The DSS-154, Request for Hearing, revised December, 1992 and the DSS-154A, Notice of Intended Action, revised October, 1993 shall be incorporated by reference.

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

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 2, 1998

FILED WITH LRC: September 9, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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: Cathy G. Mobley

(1) Type and number of entities affected: There are approximately 16,000 substantiated abuse referrals annually, and this

amended regulation will provide appeal rights to those individuals. This department estimates that ten percent of this total number of individuals will request a hearing to appeal the substantiated finding. The Department of Juvenile Justice should have a minimal number of employees working in residential facilities and group homes for which they will provide an appeal process.

(2) Direct and indirect cost or savings to those affected: There is no cost or savings to those affected.

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

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

(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:

1. First year: \$1,760,000

2. Continuing cost or savings: \$1,000,000

3. Additional factors increasing or decreasing costs: Staff involved in administrative hearings may not initially increase in numbers, until the actual need for additional hearings is ascertained. Therefore there may be a portion of this cost which shifts from other programs. The Department of Juvenile Justice does not anticipate the need for any additional staff in order to provide their appeal process.

(b) Reporting and paperwork requirements: The cost of the administrative hearing is approximately \$1100. This amount includes the cost of the mailing certified letters to the 16000 individuals as well as the cost of the hearings for those appealing the findings of fact. No additional cost is estimated for the Department of Juvenile Justice.

(4) Assessment of anticipated effect on state and local revenues: Possible increase in hearing officer staff personnel which would be included in the above estimate. Does not apply to the Department of Juvenile Justice.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 50% of the cost will come from the Social Service Block Grant (SSBG) funds and Title IV-E moneys. The remaining 50% will come from 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: To be determined after the public hearing takes place.

(a) Geographical area in which administrative regulation will be implemented: To be determined after the public hearing takes place.

(b) Kentucky: To be determined after the public hearing takes place.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered because this requirement is a federal mandate from 42 USC 5106a.

(8) Assessment of expected benefits: The implementation of provisions for due process for alleged perpetrators as passed in the 1998 General Assembly.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation does not effect the public health or environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict, overlapping or duplication was found.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the fair hearing amendments pursuant to this administrative

regulation. These amendments will become effective for abuse and neglect investigations beginning October 1, 1998 and after.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 205.10 and 42 USC 5106a.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate this regulation is being amended to provide due process through notification by certified mail to all alleged perpetrators of substantiated abuse/neglect investigations. This due process will be offering appeal rights to these individuals. These appeals will be heard in local resolution hearings, then if not resolved at that level, will be heard by a hearing officer from the Office of Performance Enhancement's Quality Assurance Section. The Department of Juvenile Justice will allow for a different appeal process to be applied to employees of residential facilities and group homes.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 205.10, the state agency responsible for the protection of children shall be required to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. Pursuant to 42 USC 5106a, the requirement of providing due process appeal rights to alleged perpetrators of substantiated abuse/neglect investigations will be added as an amendment to this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate. No, this due process right of appeal will be offered to all alleged perpetrators of child abuse/neglect, as required by federal mandate.

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 HEALTH SERVICES

Department for Medicaid Services

Division of Financial Management and Analysis (Amendment)

907 KAR 1:034. Early and periodic screening, diagnosis and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 CFR 441.50 through 441.62, 42 USC 1396d

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 GA HB 132 (42 USC 1396d, 441.50 through 441.62, EO 96-862)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 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 Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to the early and periodic screening, diagnosis and treatment service and early and periodic screening, diagnosis and treatment special services for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy children under age twenty-one (21).

Section 1. Definition. (1) "By report" service or item means any service for which a maximum allowance has not been established because the item is rarely billed to the Kentucky Medicaid Program or because the service is unusual, variable, or new.

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

(3) "EPSDT" means early and periodic screening, diagnosis, and

treatment.

(4) "Periodicity" means the frequency with which an individual may be screened or rescreened.

(5) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(6) "Screening" means the review of the health and health-related conditions of a recipient by a health care professional to determine if any further diagnosis or treatment is needed.

(7) "Services" means health care, treatment, procedures, supplies, items, or equipment.

Section 2. Screening Provider Participation Requirements. Any health care provider meeting the requirements established [set forth] below may be eligible to participate in the Medicaid Program as a screening provider:

(1) A physician shall be licensed in the state of Kentucky;

(2) Any early and periodic screening clinic or other organization qualified to provide screening services, including local health departments, shall be under the direction of a licensed physician, pediatric [and] advanced registered nurse practitioner, or registered professional nurse currently licensed by the state of Kentucky who shall be responsible for assuring that the requirements of participation are met and that the procedure established by the Medicaid Program are carried out;

(3) Screening clinics conducted under the direction of a registered professional nurse or an advanced registered nurse practitioner shall have a licensed physician acting as medical consultant; and

(4) Screening examinations and tests performed by licensed professional staff, or supportive staff under the direct supervision of the licensed professional, shall be in accordance with the professional practice standards for the profession.

Section 3. Screening. EPSDT screening services shall be directed toward the early detection of diseases and abnormalities. The services shall be appropriate for the age and health history of the recipient. These services include:

(1) An initial, periodic, or additional health assessment of a recipient provided in accordance with Sections 2 and 5 of this administrative regulation which includes the following:

(a) Health and development history;

(b) Unclothed physical examination;

(c) Development assessment and mental health screening;

(d) Assessment and provision of immunizations as appropriate for age and health history;

(e) Assessment of nutritional status;

(f) Vision testing;

(g) Hearing testing;

(h) Laboratory procedures appropriate for age and population groups, including lead screening and testing as appropriate;

(i) Director referral for dental services for diagnosis and treatment for children two (2) [three (3)] years of age and over; and

(j) Anticipatory guidance and health education; [or]

(2) A health assessment examination, or evaluation of a recipient by a licensed or certified health care professional acting within his scope of practice, at intervals other than those specified in Section 5 of this administrative regulation indicated by medical necessity, to determine the existence of defects, physical or mental illnesses, or conditions; or

(3) Any other recipient encounter with a licensed or certified health care professional that results in the determination of the existence of a suspected:

(a) Defect;

(b) Illness;

(c) Medical condition; or

(d) A change or complication in a medical condition.

Section 4. Immunizations. Each screening provider participating in accordance with Section 2(1), (2), and (3) of this administrative regulation shall be required to make available, at the time of screening, immunizations appropriate for age and health history of the recipient being screened.

Section 5. Periodicity Schedule. The periodicity schedule shall define the age appropriate services and time frames for screenings. The periodicity schedule shall be recommended by the Department for Public Health and approved by the Department for Medicaid Services. Additional medical and dental assessments shall be provided when medically indicated. The periodicity schedule is incorporated by reference in the "Early and Periodic Screening, Diagnosis, and Treatment Services Manual".

Section 6. Diagnosis and Treatment. If referral for additional service is indicated as a result of a screening or any other encounter with a licensed or certified health care professional acting within the scope of his practice, further diagnosis and medical treatment services shall be covered if they are:

(1) Otherwise covered by the Medicaid Program; and

(a) Limited to persons under the age of twenty-one (21); or

(b) Not limited with regard to the age of the recipient; [or]

(2) Otherwise covered by the Medicaid Program, meet the standard for prior authorization and medical necessity as specified in Section 9 of this administrative regulation; and

(a) Limited to persons twenty-one (21) years of age or older; or

(b) Limited in ways unrelated to age; or

(3) Not otherwise covered by the Medicaid Program and meet the requirements for EPSDT special services as provided for in Section 7 of this administrative regulation.

Section 7. EPSDT Special Services. EPSDT special services are other health care, diagnostic services, preventive services, rehabilitative services, treatment, and other measures described in 42 USC Section 1396d(a), that are not otherwise covered under the Kentucky Medicaid Program and that are medically necessary, as defined in Section 9 of this administrative regulation, to correct or ameliorate defects and physical and mental illnesses and conditions of recipients.

Section 8. EPSDT Diagnostic and Treatment Provider and EPSDT Special Services Provider Participation Requirements. (1) An EPSDT diagnostic [diagnosis] and treatment provider shall meet the requirements for participation in the Kentucky Medicaid Program as specified in 907 KAR for the particular diagnostic [diagnosis] and treatment services rendered.

(2) Except as otherwise specified in 907 KAR, a provider seeking to provide EPSDT special services, as defined in Section 7 of this administrative regulation, shall first contact the department in writing or by telephone to apply for enrollment to become an EPSDT special services provider. In order to be enrolled, the provider shall supply documentation or other evidence which establishes that all of the following conditions are met:

(a) The provider is licensed or certified under state laws to provide the services, or; if the license or certification is not available under such state laws, is otherwise authorized under state laws to provide the service, and is not suspended or otherwise disqualified.

(b) If the provider is out of state, the provider shall meet comparable requirements in the state in which he does business.

Section 9. Prior Authorization for EPSDT Diagnosis and Treatment Services and EPSDT Special Services. Except as otherwise provided for in this section or in 907 KAR Chapters 1 and 3, those EPSDT diagnosis and treatment services and EPSDT special services which are not otherwise covered by the Kentucky Medicaid Program shall be covered subject to prior authorization if the requirements of subsections (1) and (2) of this section are met. The department shall review requests for services to determine medical necessity without regard to whether the screen was performed by a Kentucky Medicaid provider or a non-Medicaid provider.

(1) Requests for prior authorization for EPSDT services established [set forth] in Section 6(2) and (3) of this administrative regulation shall state that the request is for EPSDT services, and shall be accompanied by the following information:

(a) The primary diagnosis and significant associated diagnoses;

(b) Prognosis;

(c) Date of onset of the illness or condition, and etiology if known;

(d) Clinical significance or functional impairment caused by the illness or condition;

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(e) Specific types of services to be rendered by each discipline with physician's prescription where applicable;

(f) Therapeutic goals to be achieved by each discipline and anticipated time for achievement of goals if applicable;

(g) The extent to which health care services have been previously provided to address the defect, illness, or condition, and results demonstrated by prior care where applicable; and

(h) Any other documentation necessary to justify the medical necessity of the requested service.

(2) Except as otherwise provided for in 907 KAR Chapters 1 and 3, requests for approval of services shall meet the standard of medical necessity for EPSDT if the following applicable criteria, [where applicable,] are met:

(a) The services shall be to correct or ameliorate defects and physical and mental illnesses and conditions;

(b) The services to be provided shall be medical or remedial in nature;

(c) The services shall be individualized and consistent with the recipient's medical needs;

(d) The services shall not be requested primarily for the convenience of the beneficiary, family, physician or another provider of services;

(e) The services shall not be unsafe or experimental;

(f) If alternative medically accepted modes of treatment exist, the services shall be the most cost-effective available;

(g) The requests for diagnostic and treatment services in community-based settings shall not be approved if the costs would exceed those of equivalent services at the appropriate institutional level of care [as appropriate];

(h) The services to be provided shall be:

1. Generally recognized by the appropriate medical profession as an accepted modality of medical practice or treatment;

2. Within the authorized scope of practice of the provider; and

3. An appropriate mode of treatment for the medical condition of the recipient;

(i) Scientific evidence, if available, shall be submitted consisting of:

1. Well designed and well conducted investigations published in peer-review journals, demonstrating that the service may produce measurable physiological outcomes;

2. In the case of psychological or psychiatric services, measurable psychological outcomes, concerning the short and long term effects of the proposed service on health outcomes;

3. Opinions and evaluations published by national medical organizations, consensus panels and other technology evaluation bodies supporting provision of the benefit, when available;

(j) The predicted beneficial outcome of the services outweighs potential harmful effects;

(k) The services improve the overall health outcomes as much as, or more than, established alternatives.

(3) If reimbursement is being sought on a "by report" basis, a description of the service, the proposed unit of service, and the requested dollar amount shall be included with the request for authorization.

(4) Prior authorization requests for EPSDT services shall be reviewed for medical necessity without regard to the source of the referral to the service.

(5) School-based health services provided in accordance with 907 KAR 1:715 which are included in an authorized Individual Education Program (IEP) shall be considered to be medically necessary and shall not be subject to further Medicaid prior authorization requirements. [requirement. In accordance with the provisions of KRS 605.115, this subsection of this administrative regulation shall be applicable for services provided on and after January 1, 1995.]

Section 10. Appeal Rights. Recipients have rights of appeal as established in 907 KAR 1:563.

Section 11. Incorporation [Material Incorporated] by Reference. (1) [The] "Early and Periodic Screening, Diagnosis, and Treatment Screening Services and Early and Periodic Screening, Diagnosis, and Treatment Special Services Manual", Department for Medicaid Services, May 1998 Edition, is [of August 1996 shall be] incorporated by reference [in this administrative regulation].

(2) This material may be inspected, copied, or obtained at the [manual shall be on file in the Office of the Commissioner,] Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, [Third Floor East,] Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [40601-]

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 11. Appeal Rights. Recipients have rights of appeal as specified in 907 KAR 1:560.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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: 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 (564-6204)

(1) Type and number of entities affected: Potentially 270,661 eligible children under age twenty-one (21) may be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,000,000 (cost)

2. Continuing costs or savings: \$1,000,000 (cost)

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. *Federal matching funds of 70.49% equaling \$704,900 and state matching funds of 29.51% equaling \$295,100. State revenues will come from existing budgeted 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 preventive medical care 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: Medicaid eligible children may be unable to access or receive necessary preventive medical care.
- (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. and 42 CFR 440.230
2. State compliance standards. This administrative regulation does set compliance standards for EPSDT preventive services in accordance with the American Academy of Pediatrics.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does set minimum standards in accordance with the federal mandate regarding EPSDT services.
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. No
3. State the aspect or service of local government to which this administrative regulation relates. None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation.
 - Revenues (+/-): No Impact
 - Expenditures (+/-): No Impact
 - Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 CFR 440.40(b), 447, Subpart B, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 GA HB 132 [42 CFR 440.40(b), 447-Subpart B, 42 USC 1396a, b, d, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 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 Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Department for Medicaid Services for early and periodic screening diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agency.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Recipient" means a Medicaid eligible individual under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(4) "Usual and customary charge" is [means-as] defined in 907 KAR 1:002.

Section 2. Physicians and primary care centers shall be reimbursed for screening services in accordance with the payment provisions established [set forth] by administrative regulations 907 KAR 3:010 and 907 KAR 1:055 for those service providers.

Section 3. Reimbursement of Enrolled Screening Providers. The department shall reimburse participating enrolled screening providers on the basis of a preestablished fee which shall be related to the cost of service. The preestablished fees payable shall be in accordance with the following:

(1)(a) For a complete screening which includes all items or procedures listed in [Section 3,] 907 KAR 1:034, Section 3, appropriate to age and health history of the recipient, except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee shall be seventy (70) [twenty-(20)] dollars per recipient screened; and

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(2) For a partial screening, which shall include at least a health history and unclothed physical examination, [with some but not all items listed in Section 3, 907 KAR 1:034 completed, but at no fault of the screening clinic or agency,] the fee shall be thirty (30) [twelve-(12)] dollars per recipient screened; and

(3) For completion of a partial screening with some items or procedures appropriate to age and health history of the recipient provided as a follow-up to a partial screening as established in subsection (2) of this section, [(whether the partial screening is provided by a physician, primary care center, or screening clinic or agency,)] the fee shall be forty (40) [eight-(8)] dollars per recipient screened.

(4) For an interperiodic screen which is medically necessary to determine the existence of suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened.

(5) A fee paid in accordance with subsection (1) to (4) [(3)] of this section shall not exceed the usual and customary charge of the provider for the service.

Section 4. Reimbursement of EPSDT Diagnostic and Treatment Providers. The department shall reimburse EPSDT diagnostic [diagnosis] and treatment providers participating in compliance with Section 8(1) of 907 KAR 1:034 as specified in 907 KAR Chapters 1 and 3 applicable to reimbursement for the particular diagnosis and treatment services rendered.

Section 5. Reimbursement of EPSDT Special Services Providers. Except as specified in Section 6 of this administrative regulation, the department shall reimburse EPSDT special service providers a percentage of the usual and customary charges or a fee negotiated by the department adequate to obtain the service. The percentage of charges or negotiated fee shall not exceed 100 percent of the usual and customary charges. If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.

Section 6. Reimbursement of School-based Health Services Providers. The department shall reimburse school-based health services providers for services included in an individual education program which are provided to Medicaid eligible recipients based on a fee-for-service system designed to approximate cost for all participating providers in the aggregate without settlement to exact cost. Payment rates for services provided on or after January 1, 1995, shall be established using the following methodology:

(1) Interim payment rates for services provided from January 1, 1995, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.

(2) Interim payment rates for services provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(3) Final rates shall be set based on the following:

(a) Except as specified in paragraphs (d) and (e) of this subsection, a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service.

1. The statewide mean and median cost for a service shall be based on the contracted hourly service cost and the cost associated with publicly employed professionals;

2. The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean.

(b) Cost for publicly employed professionals shall be computed in the following manner:

1. Salary, fringe benefits, and indirect overhead shall be included.

2. Annual professional salaries (including full time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day.

3. The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage.

4. An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage.

(c) Payments for professional services shall be based on units of service which are fifteen (15) minute increments.

(d) Payments for medical transportation provided in accordance with 907 KAR 1:715, Section 5, shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education.

(e) Payments for assistive technology and medical equipment provided in accordance with 907 KAR 1:715, Section 6, shall be based on actual invoiced cost including cost of shipping and handling, for the authorized equipment included in an individual education program.

(f) ~~[Except as provided for in paragraph (g) of this subsection;]~~ The due date for the required cost data is July 31 following the end of the state fiscal year (June 30 of each year).

(g) ~~[The due date for the required cost data for the 1995 fiscal year is November 1, 1996.]~~

(h) A one (1) month grace period shall exist for the submittal of the cost data. If the cost data is not submitted either timely or within

the specified grace period, the school-based health services provider shall be terminated from the program.

(h) ~~(f)~~ For rate years ending June 30, 1997 and thereafter the final rates for prior years shall be set using cost data available as of September 1 of the current rate year. ~~[For the rate year ending June 30, 1996, the final rates for the rate year shall be set using cost data available as of December 1, 1996.]~~

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 10, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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: 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 (564-6204)

(1) Type and number of entities affected: Potentially 270,661 eligible children under age 21 and providers of screening services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,000,000 (cost)

2. Continuing costs or savings: \$1,000,000 (cost)

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. *Federal matching funds of 70.49% equaling \$704,900 and state matching funds of 29.51% equaling \$295,100. State revenues will come from existing budgeted 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 preventive medical care 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: Medicaid eligible children may be unable to access or receive necessary preventive medical care.

(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. and 42 CFR 440.230.

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 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. No

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): No Impact

Expenditures (+/-): No Impact

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (Amendment)

908 KAR 1:340. Narcotic treatment programs.

RELATES TO: KRS Chapter 222, 21 CFR Parts 291, 1301

STATUTORY AUTHORITY: KRS 194.050, 222.231, 21 CFR Parts 291, 1301, 1998 GA HB 132 [EO-95-79]

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 132 of

1998 General Assembly [KRS-194.050] and 222.231 authorize the Cabinet for Health Services to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. [Executive Order 95-79 effective 12-28-95 reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services.] This administrative regulation establishes the State Narcotic Authority with the Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services, and establishes licensure and operations requirements for narcotic treatment programs.

Section 1. Definitions. (1) "Administrative detoxification" means the detoxification from the approved controlled substance for the safety and well being of the client, other clients, and staff of the narcotic treatment program.

(2) "Approved controlled substance" means the drugs methadone (powdered methadone is not an approved controlled substance) or ORLAAM (brand of levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) used in the treatment of narcotic addiction.

(3) "CHS or cabinet" means the Cabinet For Health Services.

(4) "Client" means any individual who receives a controlled substance for the purpose of maintenance or detoxification in an NTP.

(5) "DEA" means the Drug Enforcement Administration.

(6) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(7) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(8) "FDA" means the Food and Drug Administration.

(9) "Main program" means the location where all administrative and medical information related to the narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, urine screens) at the main location.

(11) "Narcotic detoxification program" means a program using approved controlled substances in continually reducing dosages over a period of time for the purpose of relieving or reducing withdrawal symptoms.

(12) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce narcotic craving, and permit normal functioning so that, in combination with rehabilitation services, clients can develop a productive lifestyle.

(13) "Narcotic treatment program" or "NTP" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(14) "Phase treatment" means the client's progress through treatment in a graduated sequence system.

(15) "Program sponsor" means a person or representative of an individual or entity who assumes responsibilities for the operation of a narcotic treatment program as well as being responsible for the on-site conduct of all employees, and other persons providing services, and ensures that the program is operated in compliance with this administrative regulation.

(16) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(17) "Public health director" means the director of the local public health department.

(18) "SNA" means the State Narcotic Authority.

(19) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off site.

(20) "Voluntary detoxification" means a client requested, physician supervised withdrawal from the approved controlled substance.

Section 2. State Narcotic Authority. The SNA shall be the Director, Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services.

Section 3. Alternative Distribution System. The SNA shall establish an alternative distribution system regarding the direct shipment of methadone and ORLAAM to approved treatment programs using narcotic drugs. An approved NTP shall submit a list of personnel, with a copy of the powers of attorney that authorizes them to sign order forms and receive shipments of controlled substances, pursuant to 21 CFR 1305.03, 1305.04, 1305.07, to the Hazelwood Center. The program sponsor shall [Programs may] not designate staff other than a physician, registered nurse, licensed practical nurse, or pharmacist to sign for or receive shipments of controlled substances. The program sponsor [Programs] shall submit a completed federal form 222 to Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky 40202 to obtain methadone or ORLAAM.

Section 4. Application to Operate a NTP. (1) A proposed program desiring to operate a NTP shall meet the requirements of this administrative regulation, and shall be licensed in accordance with 908 KAR 1:150 through 1:260 prior to application.

(2) The proposed program shall submit each staff member's, including the program sponsor, administrator, and all other personnel, profile and resume of educational and professional experience, including Social Security numbers and date of birth.

(a) If the program is a corporation or partnership, the application shall list all partners' and members' [officers'] names, addresses, dates of birth, and Social Security numbers.

(b) Failure to provide this information shall disqualify the application for further review.

(3) The proposed program shall submit or cause to be submitted on its behalf to the SNA a written protocol which shall serve as an application for licensure by the SNA. This protocol shall include the following:

(a) A plan of operation;

(b) A description of the geographic area to be served by the program;

(c) Population and area to be served;

(d) The estimated number of persons, in the described area, addicted to heroin or other morphine-like drugs and an explanation of the basis of the estimate;

(e) The estimated number of persons in the described area addicted to heroin or other morphine-like drugs presently under treatment in methadone and other treatment programs;

(f) The number of patients in narcotic [regular] treatment, projected rate of intake, and factors controlling projected intake;

(g) Program goal;

(h) Plan for evaluation;

(i) Memoranda of agreement which reflect supportive services from the administrative head of the following agencies:

1. Hospitals;

2. Local law enforcement including jails;

3. Community mental health and mental retardation agencies;

4. Private, for-profit alcohol and drug services and publicly funded alcohol and drug services;

5. Department of Vocational Rehabilitation Services; and

6. Private, for-profit mental health counseling services;

(j) Client identification system;

(k) System to prevent client's multiple program registration;

(l) Organizational chart which includes the persons responsible for the program;

(m) First year budget, which list available, pending, or projected funds;

(n) Copies of letters verifying funding;

(o) Schedule of the amount of the client fees;

(p) Duties and responsibilities of each staff member and the relationship between the staffing pattern and the treatment goals;

(q) Duties and responsibilities of the medical director;

(r) Plan for delegation of the medical director's duties, if appropriate;

(s) Training and experience of counselors and therapists;

(t) Counselor and therapist caseload;

(u) Procedures and criteria for client selection;

(v) Program rules and instructions;

(w) Facility description;

(x) Initial dosage levels;

(y) Daily dosage levels;

(z) Operational procedures including the procedures to be used in inventory maintenance and daily dosing schedules;

(aa) Procedures, or documented efforts made, which provide for cooperation with local jails and hospitals for either withdrawal or maintenance while in custody or hospitalized in the event of client incarceration or hospitalization;

(bb) Procedures in the event of state or national or manmade emergency or disaster.

(cc) Urinalysis procedures which utilize random selection or unannounced collection;

(dd) Procedures for scheduled termination, voluntary termination, and involuntary termination for cause, including reasons for termination for cause;

(ee) Fair hearing procedures for client grievances;

(ff) Copies of all forms developed and to be used by the proposed NTP;

(gg) Facility address and dimensions;

(hh) Amount of space devoted to methadone treatment, including waiting, counseling, dispensing, and storage areas;

(ii) Days and hours of dispensing;

(jj) Days and hours of other program services;

(kk) Type of services provided and the hours of use, if the facility is also used for purposes other than narcotic treatment; and

(ll) Diagram of the facility housing the NTP and an accompanying narrative which describes client flow. The diagram and narrative shall specify:

1. Waiting areas;

2. Office space;

3. Dispensing area;

4. Urine collection locations;

5. Record storage area;

6. Parking or transportation access; and

7. The relation of the services to the [total] facility diagram.

(4) A protocol proposing a new program or a complete revision of the protocol of an approved program shall be submitted to the SNA.

(5) The proposed program shall submit written policies and procedures in accordance with Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of this administrative regulation.

Section 5. SNA Application Review Process. (1) The SNA shall review the application materials within thirty (30) working days for the following:

(a) Criminal convictions by all individuals or entities involved with the proposed program within the past five (5) years, including violations of controlled substance laws and administrative regulations;

(b) Suspension or revocation of any FDA, DEA, state narcotic licenses, or professional licenses in the past five (5) years of any staff member including the medical director, registered nurses, licensed practical nurses and registered pharmacist; and

(c) The written monitoring reports and compliance reports of other NTPs currently operated by the applicant or by any corporation or partnership with whom the applicant has been associated in the past five (5) years. These reports shall be obtained from the DEA and FDA agents, medical licensing boards, pharmacy licensing boards, nursing licensing boards, and from other SNAs.

(2) The SNA shall not grant an application to operate a NTP to any applicant that has employed staff or, if applicant is a corporation or partnership, any officer of the corporation or member of the partnership who was convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years.

(3) The SNA shall work in collaboration with the DEA and FDA in reviewing the proposed application. Before any narcotic license shall be issued to the proposed program, the SNA, the DEA office, and the FDA office shall all agree.

(4) The SNA shall conduct an on-site inspection to review the proposed program and interview the medical director, program sponsor and dosing staff.

(5) The SNA shall not approve any application for a NTP to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA or FDA or state licensure agencies in states in which the entity currently legally operates.

(6) The SNA shall respond in writing, within ten (10) working days, to the proposed program upon receipt of all reports and documents from the applicant and all agencies involved.

(7) If the application to operate the NTP is approved the SNA shall, within thirty (30) working days of the completion of the review process:

(a) Issue a letter, pending receipt of federal approval, which shall indicate the approval to operate a NTP in Kentucky and shall include, the DEA license number, the FDA license number, and the expiration date of the license to operate; and

(b) Assign a facility responsible for the distribution of the approved controlled substances to be used in the NTP.

(8) If the application to operate a NTP is not approved within thirty (30) working days, the SNA shall respond in writing citing the deficiencies, the requirements and time frames for taking corrective actions to make the program licensable.

(9) The proposed program shall provide a plan of correction for deficiencies cited within fifteen (15) working days from date of receipt of the written deficiencies.

Section 6. Organization and Administration Policies. (1) NTPs shall develop policies and procedures that include:

(a) Waiting list criteria;

(b) Criteria for the use of ORLAAM (levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) for clients needing or desiring take-home doses, but who do not meet eligibility requirements for take-home doses;

(c) Policies pertaining to the preparation and labeling of client doses which shall include:

1. The quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record;

2. Assurance that doses shall be labeled with the exact quantity of narcotic drug ordered;

3. Take-home doses shall be formulated in such a manner that shall reduce the likelihood of injecting the dose;

4. Policies that permit clients to know their dose level; and

5. Policies that shall provide for the packaging of take-home doses of the approved controlled substances in containers that meet the requirements of 15 USC 1471. The label of the doses shall include the name of the program, address and telephone number of the program, name of the controlled substance, name of the client, the name of the physician ordering the substance, and the quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to them.

(2) The program policies shall indicate that the medical director or program physician at the individual NTP is in charge of all dose adjustments.

(3) The program policies shall indicate that dosing personnel do not alter client doses without the medical director or program physician's order.

(4) Verbal dosing orders shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(5) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician.

(6) Detoxification policies for voluntary and administrative detoxification shall be in compliance with 21 CFR 291.505(d)(8) and (9), i.e.: short-term (thirty (30) days or less), or long-term (more than thirty (30) days and as much as 180 days).

(7) Urine collection policies for drug screening purposes shall be developed to assure absence of falsification. Each sample shall be analyzed for the following drugs:

(a) Methadone;

(b) Cocaine;

(c) Opiates;

(d) Amphetamines;

(e) Barbiturates;

(f) Tetrahydrocannabinol;

(g) Benzodiazepines; and

(h) Any other drug(s) that has been determined by the NTP or the SNA to be abused in that program's locality or any other drugs that may have been abused by the client.

(8) NTPs shall have policies that prohibit procedures for offering a bounty, monetary or equipment or merchandise reward, or free serv-

ices for individuals in exchange for recruitment of new clients into the program.

(9) NTPs shall assure compliance with the system of treatment phases outlined in Section 11 of this administrative regulation.

(10) NTPs shall develop quality assurance policies to assure that services provided are achieving beneficial effects for the clients using the services.

(11) Urine drug screens shall be reviewed by the treatment team monthly to determine client's reduction in the use of unauthorized medications.

(12) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(13) A valid urine drug screen negative for the approved controlled substances, with the exception of ORLAAM, allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(14) The NTP shall assure that urine drug screens are not used as the sole criteria for dismissing clients from the program.

(15) NTPs shall develop quality assurance procedures to determine the adequacy of the NTP's organization and service delivery. The assessment shall:

(a) Examine the content of the NTP's organizational and administrative structure and shall assess the following:

1. Availability of ~~[services to include]~~ counseling services;

2. Availability of physical health services to clients;

3. Vocational training available to clients;

4. Legal assistance or referral, if indicated for the client;

5. Americans With Disabilities Act (ADA) defined accessibility in the on-site programs to the clients;

6. Quality assurance of the program services ~~[structure]~~; and

7. Continuity of services and care.

(b) Be reviewed ~~[conducted]~~ semiannually by the clinical supervisor, medical director, program sponsor, and the dosing nurse supervisor;

(c) Evaluate the following:

1. Appropriateness of the services delivered;

2. Completeness of documentation in client records;

3. Quality of and participation in staff training programs; and

4. Status of licenses and certification documents.

(16) All NTPs shall be open for dosing services seven (7) days a week with the optional exception of the following holidays:

(a) New Years Day, January 1;

(b) Presidents Day;

(c) Martin Luther King Day;

(d) Easter Sunday;

(e) Memorial Day, last Monday in May;

(f) ~~[(e)]~~ Independence Day, July 4;

(g) ~~[(f)]~~ Labor Day, first Monday in September;

(h) ~~[(g)]~~ Thanksgiving Day, fourth Thursday in November; and

(i) ~~[(h)]~~ Christmas Day, December 25.

Section 7. Personnel Policies. (1) The NTP shall have a program sponsor who shall:

(a) Assure that KRS 222.231, 908 KAR 1:150 through 1:260, 21 CFR 291.505(g), 1301.76, KRS Chapter 218A, 902 KAR 55:010 to 55:095 and this administrative regulation, are followed by the NTP;

(b) Have two (2) years documented experience in the treatment of addictions. The program sponsor shall be [a] certified ~~[chemical-dependency counselor-recognized]~~ by the ~~[Kentucky-Credentialed]~~ Board of Certification of Alcohol and Drug Counselors, or a physician, nurse, physician assistant, pharmacist, or nurse practitioner certified by the respective licensing subspecialty, or shall have a minimum of a masters degree in the field of addictions or related field; and

(c) Assure that clients:

1. Receive and sign written information describing all facets of the program in a manner that the client understands;

2. Have had the contents of the "Consent to Treatment with an Approved Narcotic Drug", Form FDA 2635 (7/93), communicated to them and voluntarily sign the consent to treatment;

3. Under eighteen (18) years of age, have parents or legal guardians of nonemancipated minors sign the consent to treatment;

4. Receive information on communicable diseases at admission, readmission, and at six (6) month intervals for the first two (2) years of

treatment, and as indicated clinically after two (2) years. Communicable diseases shall include tuberculosis, hepatitis, sexually transmitted diseases, and HIV/AIDS; and

5. Receive HIV/AIDS pretest, posttest counseling, and provide for voluntary HIV testing at admission or when clinically indicated thereafter.

(2) The program sponsor shall assure:

(a) That professional staff in the NTP shall maintain current credentials and that professional skills pertinent to their job descriptions shall be updated annually;

(b) That the laboratory performing the testing required under this administrative regulation is approved by the SNA, is certified by the Health Care Financing Administration as a CLIA (Clinical Laboratory Improvement Act-1988) certified laboratory, has a protocol in place that assures the integrity of the chain of custody for all urine drug tests, and an assurance that the initial test and confirmatory tests for drugs tested on behalf of the program meets the following standards;

1. Marijuana metabolites - initial screen 50ng/ml, confirmation test 15ng/ml;

2. Cocaine metabolites - initial screen 300ng/ml, confirmation test 150ng/ml;

3. Opiates metabolites - initial screen 300ng/ml, confirmation test 300ng/ml;

4. Amphetamines - initial screen 1000ng/ml, confirmation test of amphetamine 500ng/ml, and methamphetamine confirmation test 500ng/ml;

5. Barbiturates - initial screen 300ng/ml, confirmation test 300ng/ml; and

6. Benzodiazepines - initial screen 300ng/ml, confirmation test 300ng/ml.

(c) That drug test results shall not be used as the sole criteria for administratively detoxifying a client from the NTP;

(d) That when drug testing results are used, presumptive laboratory results shall be distinguished from results that are definitive;

(e) That urine samples used for drug screening purposes shall be handled [coded] in a manner that ensures client confidentiality;

(f) That client attendance shall not be revealed to any person or agency without the specific written authorization of the client, or a valid court order.

(3) NTPs shall have a medical director who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(4) NTPs may have a program physician who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(5) The medical director may be the program physician.

(6) There shall be one (1) medical director or program physician

on staff for every 300 clients, or fraction thereof, enrolled in a NTP.

(7) The responsibilities of the medical director or program physician(s) shall include:

(a) Assuring there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

(b) Assuring a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

(c) Assuring that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

(d) Assuring that appropriate laboratory studies have been performed and have a documented review by the medical director or program physician;

(e) Documenting, signing, or countersigning all medical orders, within forty-eight (48) hours, that include the first dose of narcotic drug or other approved medications;

(f) Documenting, signing, or countersigning all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

(g) Assuring that information on all communicable diseases is communicated to all clients as required; and

(h) Assuring that a review and cosignatures of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

(8) The medical director or program physician at the NTP shall:

(a) Supervise clinical staff responsible for preparation and administering of the approved controlled substances; and

(b) Assure compliance with program procedures and administrative regulations;

(9) The medical director or program physician shall order all doses, [and] all increases or decreases of doses of medications or other approved drugs for the client, through the licensed NTP.

(10) Any verbal orders shall be given to nursing or pharmacy staff and shall be cosigned by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) The medical director or program physician shall review all laboratory testing results required by the FDA, SNA, and testing indicated by the client's clinical record. Any specific additional laboratory testing shall be ordered by the medical director or program physician.

(12) The medical director or program physician, in determining the client's take-home medications, shall take into consideration the items addressed in 21 CFR 291.505(d)(6)(C)(iv)(B) and shall comply with Sections 10, 11, 12, 13 and 16 of this administrative regulation.

(13) NTPs shall provide dosing staff in sufficient numbers to meet the needs of the clients during dosing hours. Dosing staff shall:

(a) Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

(b) Not be dually assigned as [primary client] counselors.

(14) Programs shall provide counselors who shall have, at a minimum, a bachelors degree in a human services related field and an alcohol and drug [a-chemical-dependency] counselor certification from the Kentucky [Certification] Board of Alcohol and Drug Counselors [Chemical-Dependency-Professionals, Inc.] or be actively engaged in the certification process.

(15) There shall be one (1) counselor for every forty (40) clients in the program.

Section 8. Physical Plant. (1) The building used for the NTP shall meet requirements in 21 CFR 1301.74(j) and shall have space for the following operations:

(a) The waiting area shall be large enough to accommodate the clients arriving for services.

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary, shall accommodate the dosing staff, and shall contain the following:

1. A stainless steel sink;
2. Hot and cold running water;
3. A refrigerator for dosing supplies; and
4. Pill-counting trays if tablets are being used.

(2) Security and floor plan of the dosing area may be unique to

each program, but shall conform to the requirements in 21 CFR 1301.72.

(3) The NTP shall make arrangements for the facility to have two (2) restrooms which shall be handicapped accessible.

(4) The NTP shall assure that restrooms available to clients to provide urine specimens are secure, private, clean, and sanitary.

(5) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(6) The physical plant shall be secured by a local security company approved by the DEA and the SNA.

(7) There shall be a minimum of two (2) panic buttons or similar devices for each NTP, one (1) in the reception area, and one (1) in the dosing area.

(8) There shall be a telephone with an outside line accessible in the dosing area.

(9) Internal security may be unique to each NTP and shall meet the requirements of 21 CFR 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA Office and the SNA.

(10) Parking space at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time or have specific appointment schedules to prevent the influx of clients that would be disruptive or unsafe to the surrounding community.

(11) The NTP shall comply with all local zoning and ordinance laws and requirements.

Section 9. Security and Control. (1) The security and control segment of the NTP's assessment procedure shall be conducted quarterly by the program sponsor and dosing nurse supervisor or pharmacist who shall assure that the requirements of 21 CFR 1304.28 are met. Other items to be evaluated shall include:

(a) Security of the narcotic safe and the building perimeter shall be checked with the contracted [a] security company at the facility location, quarterly. The security company may choose to test the system by telephone.

(b) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(c) Inventory reconciliation shall be conducted, at a minimum of quarterly, and all reconciliation documents shall be retained by the program for five (5) years.

(d) Five (5) percent or more of any inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies shall be reported to the SNA, to the DEA and FDA, and the Department for Health Services' Office of Drug Control, using the DEA 1305.12 (12/85) "Report of Theft or Loss of Controlled Substances" form, within forty-eight (48) hours of the event.

(g) ~~(g)~~ A system shall be devised to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(g) ~~(h)~~ Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform to 21 CFR 1304.28 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(2) Utilization and effectiveness of delivered services shall be reviewed by the program sponsor and medical director annually for the following:

(a) Treatment slot utilization and cost per slot;

(b) Staff-to-client ratio;

(c) Cost per counseling session; and

(d) Cost per client for other program services.

(3) NTPs shall maintain written policies to assure the confidentiality of all client records.

(4) Quarterly, the program sponsor shall review a ten (10) percent random sample of client records for the following information and assurances:

(a) Client signed the "Consent to Treatment with an Approved Narcotic Drug," Form FDA 2635 (7/93);

(b) Client signed a release of information form, developed by the NTP, which shall include:

1. Specific type of confidential information to be obtained or released; and

2. Specific dates that the release is to cover.

(c) When the program sponsor serves as a counselor then the medical director shall review ten (10) percent of the program sponsor's client records for the same information and assurances as cited above in paragraphs (a), (b) 1 and 2 of this subsection.

(5) The NTP shall retain a copy of internal assessment documents on file, which shall be available for review by regulatory agencies for five (5) years.

(6) The NTP shall participate in the data collection system as addressed in 908 KAR 1:300.

Section 10. Admission and Readmission Policies. (1) The admitting physician for the NTP shall comply with the admission requirements of 21 CFR 291.505(d)(1).

(2) ~~(a)~~ Exceptions to the admission requirements shall be those cited in 21 CFR 291.505(d)(1)(C)(iii). Programs shall adhere to the following for pregnant clients: In order for a NTP to admit or continue to treat a client who is pregnant [b] A program shall not admit as a client any person who is pregnant, nor shall any program continue to treat any client who becomes pregnant, unless and until the medical director or program physician shall first determine and document [determines and documents] in the client's record the following:

(a) [1:] The client is medically able to participate in the program.

(b) If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the medical director or program physician shall refer the client to a primary care physician who practices obstetrics or an obstetrician and shall inform the attending physician of the client's participation in the NTP.

[2:] The client shall be in the care of a qualified physician for her pregnancy and the physician is informed of the client's participation in the program. For the purpose of this subsection, "qualified physician" means a physician trained in the field of obstetrics.

3. If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the program physician shall refer any applicant who is pregnant or any admitted client who becomes pregnant to another physician for care during pregnancy and shall verify that she is actually under care of the physician to whom she was referred or another qualified physician.]

(c) [4:] In the case of a pregnant client, the medical director or program physician shall ensure that appropriate arrangements have been made for the addition-related medical care of both the client and the child following the birth of the child.

(d) [5:] Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level.

(e) [6:] The program shall ensure that the following services are available for pregnant addicts and are a part of the treatment plan:

1. The medical director or program physician shall notify the pregnant client's primary care physician of any changes in the client's treatment; [a- Periodic physician consultation at least monthly;]

2. [b:] Nutritional counseling;

3. [c:] Parenting training including newborn care, handling, health, and safety; and

4. [d:] Weekly full drug screen urinalysis;

(3) When a client applies for admission to a NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in any other substance abuse program [the NTP to another NTP].

(4) A client who has received treatment and later voluntarily detoxified may be readmitted to a NTP without evidence to support findings of current physiologic dependence, up to two (2) years after discharge if the NTP attended is able to document prior treatment of six (6) months or more, and the admitting medical director or program physician finds readmission to the NTP to be medically justified.

(5) If a [Any] client seeks [seeking] readmission to a NTP after being administratively detoxified and the medical director or program physician finds readmission to the NTP medically justified, the medical director or program physician shall document such justification in the client's medical record. [shall wait thirty (30) days prior to applying for readmission.]

~~(a) If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission.~~

~~(b) The medical director or program physician shall find readmission to the NTP medically justified.~~

Section 11. Treatment Protocol. NTPs shall comply with the following treatment phase system to achieve the goals of reduced health problems, reduced criminal activity, increased productivity, stabilization of family life and eventual drug free living.

(1) Entry phase. The first ninety (90) days of treatment all clients shall adhere to the following:

(a) Clients shall be dosed with methadone seven (7) days at the clinic site.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) Clients shall be provided HIV/AIDS education and provided or referred for HIV pretest counseling and voluntary HIV testing.

(d) Clients shall be oriented to appropriate twelve (12) step programs such as narcotics anonymous or alcoholics anonymous.

(e) During the entry phase the client shall provide an observed urine sample one (1) time per week on a random basis.

(f) There shall be documentation in the client record that treatment plans shall be reviewed and updated a minimum of every thirty (30) days for three (3) months, every ninety (90) days thereafter.

(g) The medical director or program physician shall sign the treatment plan.

(2) Phase one (1). In order for a client to enter phase one (1) the client shall not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for ninety (90) consecutive days.

(a) Once the client enters phase one (1) the client shall attend clinic six (6) times each week for observed ingestion of methadone and shall be eligible to receive a one (1) day take-home dose of methadone.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) The client shall provide an observed urine sample on a random basis at least weekly.

(d) Clients shall be encouraged to attend an appropriate twelve (12) step program.

(e) There shall be documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to his treatment plan.

(f) The medical director or program physician shall sign the treatment plan.

(3) Phase two (2). In order for the client to enter phase two (2) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 180 consecutive days;

(b) Be pursuing gainful employment or vocational training or attending school or be engaged in volunteer work, or be attending parenting classes if they are a parent at home with children. Clients with disabilities or other circumstances which might prohibit this requirement may submit a written waiver request to the SNA justifying specific reasons for the request;

(c) Have a treatment plan to meet any special needs, including disabilities;

(d) Attend clinic five (5) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(e) Provide an observed urine sample randomly on a monthly basis, or more frequently if their treatment plan requires;

(f) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(g) Be encouraged to attend appropriate self-help programs outside the clinic;

(h) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This docu-

mentation shall include a report on the client's progress in relation to the treatment plan; and

(i) Have their treatment plan signed by the medical director or program physician.

(4) Phase three (3). In order for the client to enter phase three (3) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 270 consecutive days;

(b) Have met the same entry criteria requirements as noted in phase two (2);

(c) Attend clinic three (3) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(d) Provide an observed urine sample on a random basis, monthly, or more frequently if their treatment plan requires;

(e) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(f) Be encouraged to attend appropriate self-help groups outside clinic;

(g) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to their treatment plan; and

(h) Have their treatment plan signed by the medical director or program physician.

(5) Phase four (4). In order for the client to enter phase four (4), the client shall have successfully completed phase three (3) and adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

(a) Clients shall be dosed at the clinic site two (2) days per week for observed ingestion of methadone and be eligible for up to three (3) take-home doses of methadone.

(b) The number of counseling sessions provided during this phase shall be based on the clinical judgement of the program physician and program staff.

(c) Requirements in the area of urine sample schedules, and treatment plan reviews remain the same as in subsection (4) of this section.

(d) Prior to successful completion of phase four (4), a plan shall be developed which shall assist the client toward a drug free treatment regimen for continued support.

(e) The medical director or program physician shall sign the treatment plan.

Section 12. Client Program Compliance. In order for a client to remain in a NTP and to successfully move through the treatment phases, clients shall be actively involved in the NTP by remaining in good standing at the clinic or risk being administratively detoxified. In those instances where clients have not complied with program policies:

(1) The client may be placed on a behavioral contract for a minimum of sixty (60) days during any individual program phase and shall lose all take-home dose privileges for sixty (60) days.

(2) If a client commits three (3) infractions, the medical director or program physician and staff may choose to move the client back in phases as part of the behavioral contract. The client shall lose all take-home privileges during the contract period.

(3) Following the commitment of any program infraction, the counseling staff shall assist the client in correcting the problem behavior and document this effort in the client's treatment plan.

(4) If the client continues to experience problems and breaks the behavioral contract, the client may be administratively detoxified based on the recommendation of the program physician and the program staff.

Section 13. Client Transfers. NTPs shall accept clients transferring from another program within the state, if:

(1) The NTP accepting a client voluntarily transferring from another NTP shall provide documentation that the client's medical record and reason for the transfer was sought from the client's previous NTP; and

(2) The client is in compliance with readmission policies for clients who have been administratively detoxified.

(3) In order for the client to transfer to another NTP, the following requirement shall be met:

(a) The NTP that client is leaving shall forward all relevant client records to the program where the client is transferring.

(b) The NTP shall provide documentation that the client's medical record and reason for the transfer was sought from the client's previous NTP and shall meet the admission criteria of this administrative regulation.

(c) Clients who are Kentucky residents and wish to transfer to another Kentucky-based program shall be reviewed by the new program's admission program physician or medical director on an individual basis to determine their placement on the receiving program's client listing. The review shall determine the client's need, program placement availability, and the circumstances for the transfer request.

(d) Clients who are not Kentucky residents shall transfer to a Kentucky program as a new admission or "Entry Phase" as noted in this administrative regulation, Section 11(1) of this administrative regulation, unless other phase levels are approved by the SNA.

Section 14. Client Appeal Procedures. Decisions regarding a client's treatment by staff shall be subject to appeal by the client. Each NTP shall:

(1) Develop an appeal procedure that shall be approved by the SNA; and

(2) Have procedures that include a provision that a central file of all client appeals be maintained at the NTP for review by the SNA.

Section 15. Program Waiver Process. A NTP may make an application to the SNA in order to seek waivers from any requirement of this administrative regulation.

(1) This application for a waiver shall:

(a) Be in the form of a letter to the SNA;

(b) Identify the specific sections of this administrative regulation for which a waiver is being sought; and

(c) Give the rationale for such a request.

(2) A copy of the waiver request and response shall become part of the client's permanent record, if applicable.

(3) Applications for waiver requests shall be mailed to: Kentucky State Narcotic Authority, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

(4) The SNA shall respond, in writing, to the waiver request within fifteen (15) working days. The SNA shall provide written justification for any waiver request that has been denied.

Section 16. Take-home Doses. (1) Under emergency conditions a program may issue fourteen (14) consecutive days of take-home doses without notification of FDA. The NTP shall notify the SNA and request, in writing, an exception to dosing procedures prior to administration of the first emergency dose. This request shall include:

(a) The number of take-home doses requested;

(b) The reason for the request; and

(c) The client's standing in program phases, adherence to program policies, and the total length of time the client has been enrolled at the NTP.

(2) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons subject to the limitations in this administrative regulation and written approval from the SNA which shall be filed in the client record:

(a) The client has a serious physical disability which would prevent frequent visits to the program facility.

(b) The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel, where hardship would result from requiring exact compliance with the step level schedule as noted in this administrative regulation. When a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client to receive his/her daily dosage at another program in lieu of increasing take-home dosages.

(c) The medical director or program physician shall not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception. Each program shall also maintain a separate record for all exceptions granted.

(e) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(3) A NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's urinalysis results disclose the unauthorized presence of methadone, cocaine, opiates, amphetamines, barbiturates, tetrahydrocannabinol, benzodiazepines, and any other drug(s) that has been determined by the NTP or SNA to be abused in that NTP's locality or any other drug(s) that may have been abused by the client twice or more in a sixty (60) day period.

(4) A NTP shall restrict a client's take-home dosage partially, by moving the client back on the take-home dosage schedule, if the medical director or program physician [NTP] concludes that the client is no longer a suitable candidate or risk for take-home privileges as presently scheduled.

(5) A NTP shall revoke a client's take-home privileges for not less than thirty (30) days [~~three (3) months~~] and shall require the client to ingest each dosage at the facility for any of the following reasons:

(a) The client's urinalysis discloses an absence of methadone, or methadone metabolite, and the medical director confirms the accuracy of such analysis. This shall not be applicable to clients whose daily dosage is twenty-five (25) [ten (10)] milligrams or less.

(b) The client is discovered to be misusing methadone, as defined in paragraph (e)3 of this subsection.

(c) The client attempts to register in another NTP.

(d) The client alters or attempts to alter a urinalysis.

(e) The client is not satisfactorily adhering to the requirements of the NTP by the following:

1. The client has not complied with all the rules of the NTP.

2. There is indication that the client has repeatedly used drugs improperly.

3. There is indication, including appropriate urinalysis results, that the client is misusing methadone. Misuse of methadone includes sharing, giving away, selling, or trading one's methadone dosage, or not ingesting it in accordance with methadone maintenance treatment program rules.

4. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use.

5. The client is not participating in an educational, vocational, or home-making activity.

(6) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

(a) Phase one (1) by satisfactory adherence for at least thirty (30) days.

(b) Phase two (2) by satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges.

(c) Phase three (3) by satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges.

(d) Phase four (4) by satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges.

(e) This section shall not be used to circumvent the requirements of this administrative regulation. No client shall be advanced to a phase level pursuant to this section unless he has previously been at that phase level after having satisfied the requirements of this administrative regulation.

(7) If a [When the] NTP fails to comply with the requirements in Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation, the SNA may order the [a] NTP to suspend all or part of the take-home privileges [dosage program] for a period of thirty (30) days. The SNA shall notify the NTP in writing, prior to any suspension, indicating the reasons for the suspension [outlining the reasons for the suspension prior to any suspension as follows]:

(a) The NTP shall submit a plan of correction to the SNA within ten (10) days of receipt of the SNA notification.

(b) If the NTP does not make the corrections in the time specified, [due to circumstances approved by the SNA;] but [the NTP] has responded within the ten (10) day time period indicating circumstances which the SNA has approved, the SNA may extend the suspension for

up to a second thirty (30) day period.

(c) If the NTP does not make the necessary corrections or does not submit an acceptable plan of correction with the SNA within the time frame specified in paragraph (a) of this subsection, the SNA shall suspend the NTP's take-home program until the necessary corrections have been made.

(d) If the NTP is determined by the SNA to not comply with Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation and is serving clients who meet the requirements in Sections 10 and 11 of this administrative regulation, the SNA may restrict the NTP's take-home procedures to the provision of emergency take-homes according to the requirements of Section 16 of this administrative regulation. This restriction shall be in effect on a client-by-client basis until the NTP has taken corrective actions that bring the program into compliance with Sections 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this administrative regulation.

(8) Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to illicit opiate abuse or dependence [opiate dependency].

(9) Client status relative to continued maintenance treatment shall be reevaluated at least annually after two (2) continuous years of maintenance treatment and documented in the client's record by the medical director or program physician or maintenance treatment shall be terminated.

(10) Documentation of the justification for continued maintenance treatment required by this administrative regulation shall indicate the client's progress, or lack thereof, and future expectations as required by this administrative regulation.

(11) Each NTP shall submit ~~[in its protocol]~~ a specific plan for a client's scheduled [schedule] termination of maintenance treatment indicating a ~~[an average]~~ period of maintenance before the scheduled termination.

(12) The termination plan shall include dosage schedules, information on counseling, and any other patient support which will be provided during withdrawal.

(13) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(14) A client may voluntarily terminate participation in a NTP even though termination may be against the advice of the NTP.

(15) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(16) A client's participation in a NTP may be involuntarily terminated for cause.

(17) If a NTP utilizes disciplinary proceedings which include involuntary termination for cause, the program shall include in its protocol reasons and procedures for involuntarily terminating a client's participation in the program. The procedures shall provide for:

(a) Explanation to the client of when participation may be terminated for cause;

(b) Client notification of termination;

(c) Client's right to hearing; and

(d) Client's right to representation.

(18) If the NTP elects not to terminate for cause, the protocol shall state that clients shall not be involuntarily terminated for cause except as provided in subsection (15) of this section.

(19) Except as noted in subsection (15) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

(a) The medical director or program physician deems it clinically necessary to terminate participation sooner and documents why in the client's record; or

(b) The client requests in writing a shorter termination period.

Section 17. Client Rights. In addition to the client rights cited in 908 KAR 1:200, Section 1, the following shall apply:

(1) Clients shall have the right to voluntary detoxification from the NTP.

(2) The client rights shall be posted in conspicuous places in the facility.

(3) The client rights shall be signed by the individual client attesting the client rights have been explained in such a manner that they are understood. This signed copy shall be maintained in the client's permanent medical record.

(4) Decisions regarding a client's treatment by staff may be subject to appeal by the client.

(5) Each NTP shall develop an appeal procedure that shall be approved by the SNA and shall include the following:

(a) Each appeal procedure shall contain a detailed description of the NTP's pretermination fair hearing procedure. The appeal procedure shall provide that a client has a right to a pretermination fair hearing in all cases of involuntary termination from the program for cause where continued participation in the program does not create a physically threatening situation for staff or other clients. The procedure shall require:

1. Identification of reasons for termination, as stated in the program rules, which may include:

a. Polydrug abuse;

b. Diversion of methadone;

c. Violence or threat of violence to program staff or other clients in the program; or

d. Multiple registration.

2. Written notification to the client of pending termination, containing:

a. Reasons for termination; and

b. Explanation of right to pretermination fair hearing, which shall explain to the client that rights shall be exercised within forty-eight (48) hours of written notice.

3. Provision for continuance of client's treatment status pending decision upon hearing;

4. Explanation of the client's rights during the hearing to:

a. Be represented at the hearing by a person or attorney of their choice;

b. Call witnesses on their behalf, who need not be under oath; and

c. Examine witnesses presented by the NTP.

5. Release of medical information in the client's file to the client or the client's representative at least forty-eight (48) hours prior to the hearing;

a. Medical information requests by the client shall be in the form of a signed consent to release of information.

b. Medical information to be released to the client or client's representative shall be provided by the physician in charge of the client.

(b) The appeal procedure shall state whether the client is entitled to a hearing before a panel or before a single hearing officer. If the procedure states that the client is entitled to a hearing before a panel, a single hearing officer may not be substituted for the panel without the consent of the client. In the case of a hearing before a panel, a majority vote of the panel shall be necessary to terminate a person from the NTP.

(c) The NTP shall select the hearing officer or panel from impartial persons not directly involved with the client's care.

(d) A hearing shall be scheduled within seven (7) working days from the time the client requests a hearing.

(e) Unless the program procedures require a higher standard of proof, a client's participation in a program shall be terminated for cause only after the hearing officer or panel finds by a preponderance of the evidence presented that the reason stated in the notice justifies termination.

(f) The hearing officer or panel shall render a decision not later than the first working day following the hearing. The NTP shall keep a permanent record of the proceeding. The permanent record of the proceedings may be a tape recording. The decision shall be made in writing and shall be based solely on the evidence presented at the hearing. The decision shall include a summary of the proceedings and the formal findings and conclusions of the hearing officer or panel.

1. A copy of the hearing decision shall be provided to the client.

2. Copies of all written materials, including all evidence introduced at the hearing, shall be retained for one (1) year.

(g) A client may appeal an adverse action of a hearing officer or

panel by the following:

1. The client may appeal the decision by filing an appeal with the Office of the Secretary, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) working days of the decision.

2. The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(6) All client appeals shall be maintained at the NTP for review by the SNA for two (2) years.

Section 18. Protocol for the Change of a NTP Location and the Protocol for Establishment of a Medication Station. The protocol shall be current, detailed, specific, and complete to permit evaluation by the SNA and to provide a basis for compliance inspections or surveys.

(1) If a NTP voluntarily decides to change its location or establish a medication station, the program shall notify, in writing, the DEA, FDA, the SNA and the Division of Licensing and Regulation within the cabinet within ninety (90) days of the proposed relocation. The written request to relocate shall include the following information:

- (a) The reason for the relocation;
- (b) The relocation site;
- (c) The proposed date of the relocation;
- (d) Indicate any program changes that may occur with the relocation; and

(e) If the NTP is within ninety (90) miles of the original site, the NTP shall provide the following:

- 1. Any dosing procedural changes; and
- 2. Any drug distribution problems which may occur due to the relocation.

(f) A medication station may be opened no closer than forty-five (45) miles and no further than ninety (90) miles to the main NTP.

1. The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.

- 2. The medication station shall provide the following services:
 - a. Dosing; and
 - b. Urine screen collection.

3. The program sponsor shall develop a system to prevent clients from dosing at the main NTP and the medication station.

4. Any services provided at the medication station other than those listed above shall have prior approval by the FDA and SNA.

(2) The FDA, the DEA, and the SNA shall agree that the NTP may establish a medication station or relocate to the proposed relocation site. Written approval shall be forwarded to the NTP.

(3) If a NTP voluntarily decides to close its operation, it shall notify the SNA, the DEA, FDA and the Division of Licensing and Regulation within ninety (90) days before the planned closure of the program.

Section 19. Monitoring of NTPs. (1) The SNA shall monitor NTPs to assure the health and safety of program clients and the protection of the community at large. Monitoring visits shall be conducted annually, or more frequently if indicated. The SNA may:

(a) Discontinue all take-home doses of any approved controlled substance used in any NTP ~~[narcotic treatment and detoxification, on a statewide or program basis]~~; or

(b) Discontinue the utilization of any drug approved for use in narcotic treatment programs.

(2) Focused, unannounced monitoring visits may be conducted more frequently and may occur in conjunction with the FDA and the DEA.

- (3) Monitoring shall include:
 - (a) Inspection of the NTP licensing status;
 - (b) Inspection of the status of all applicable staff licenses and certificates;

(c) Inspection of the status of the NTP'S FDA, DEA, and state licenses;

- (d) Inspection of the NTP's security which shall include:
 - 1. Building security, perimeter and internal; and
 - 2. Security of staff procedures in receipt of narcotic drug, storage of narcotic drug, and handling of the drug in preparation and dosing functions;

(e) Inspection of the records maintenance, the inventory control procedures, and the internal inventory reconciliation procedures;

(f) Inspection of the procedures the program has in place to re-

duce the likelihood of drug diversion by program clients and staff; and

(g) A random sample of doses prepared for administration may be pulled for quantitative analysis and the SNA shall submit to the program sponsor a receipt for any doses taken for analysis.

(4) Client records shall be reviewed for the following:

(a) Client signed consent to treatment with a controlled substance before the first dose was administered;

(b) Conformity with 21 CFR 291.505(d)(3)(i) requirements for minimum medical evaluations;

(c) Conformity with 21 CFR 291.505(d)(2)(ii), Sections 6(7) and 11(1)(e), (2)(c), (3)(e), (4)(d) of this administrative regulation for urine drug screening requirements;

(d) Conformity with client record that when the urine drug screen is positive for use of unapproved drugs, or is negative for the approved controlled substance, the client is counseled and suitable therapeutic action is taken by the treatment team, and the client's take-home doses have been discontinued for thirty (30) ~~[sixty (60)]~~ days. However, the urine drug screen shall not be used as the sole or primary reason for dismissing the client from the NTP; and

(e) Treatment plans have been developed and have been signed by the medical director or program physician in accordance with this administrative regulation;

(f) All physician orders for medications, doses, and dose changes and other treatments have been signed by the medical director or program physician within forty-eight (48) hours of the order's receipt;

(g) No medications are administered without the physician's orders;

(h) The SNA shall monitor for all other FDA, DEA, or SNA administrative regulations; and

(i) Records shall be reviewed for compliance with all treatment phases and waiver requests and approvals.

Section 20. Penalties. Penalties may be issued by the SNA to NTPs that have violated FDA and DEA requirements, and this administrative regulation as follows:

(1) When a monitoring visit reveals regulatory violations, the SNA shall, within ten (10) working days issue a written report, which also shall be submitted to the FDA and DEA, with a time frame of thirty (30) days for the NTP to submit a plan of corrective action.

(2) If a plan of corrective action has been submitted within the thirty (30) days and is acceptable, the SNA shall notify the NTP in writing.

(3) A follow-up visit to verify that corrective action has been made may be performed by the SNA.

(4) If the NTP has not filed a plan of corrective action within thirty (30) days after receipt of the report, the NTP shall be notified that its license shall be suspended for a period not to exceed six (6) months or revoked.

(5) Upon notification of suspension or revocation, the NTP may appeal the suspension or revocation in accordance with Section 21 of this administrative regulation.

(6) The SNA shall immediately suspend or revoke any narcotic treatment license in cases of emergencies affecting the health and safety of the client population or the community as a whole.

(7) The grounds which justify the immediate suspension or revocation of a license shall be as follows:

(a) Take-home doses that fall outside this administrative regulation without specific FDA, DEA, or SNA approval prior to issuance of the take-home dose;

(b) The allowable difference between the labeled dosage of the approved controlled substance and the actual dosage as determined by a drug assay shall be the United States Pharmacopeia error rate;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the administrative regulations;

(d) Discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Continued dosing of clients prior to completion of the intake procedures, including physical exam, except under SNA approved ~~[the most unusual emergency]~~ circumstances; ~~[which shall be recorded in the client's permanent record]~~;

(f) Evidence in the client's record that the physician is not in control of the client's treatment;

(g) Consistent dosing of clients before the consent to treatment

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with controlled substances has been signed by the client;

(h) Consistent failure to conduct the required urine drug screening procedures on all drugs listed in Section 6(7) of this administrative regulation;

(i) Failure to comply with Section 8(5) of this administrative regulation; and

(j) Revocation of licensure pursuant to 908 KAR 1:150 through 1:260.

(8) The SNA shall notify the FDA monitor, DEA, and the Department for Health Services Office of Drug Control at the time revocation or suspension is taken in accordance with subsection (4) of this section.

(9) Except in cases of emergencies affecting the health and safety of the client population or the community as a whole, an appeal shall stay any decision to suspend or revoke a license to operate pending final decision of the secretary.

Section 21. Appeals. If the SNA takes action to deny, suspend, or revoke a NTP license, the SNA shall notify the NTP in writing stating the reasons for the adverse actions and the NTP's right to appeal.

(1) If the NTP believes an action by the SNA is unfair, without reason, or unwarranted, the NTP may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth (4th) Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receipt of notice of action from the SNA.

(2) Upon receipt of the appeal, the secretary, or his designee, shall notify the NTP in writing within fifteen (15) days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The NTP shall be notified in writing of the decision of the hearing officer.

(5) If a NTP, whose license has been suspended or revoked pursuant to Section 20(6) and (7) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the NTP. The hearing may be continued at the request of the NTP.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the NTP shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the client population or the community as a whole, the license of the NTP shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(6) If suspension or revocation of the license is upheld, the secretary's, or his designee's, notification shall specify the date by which the NTP shall close.

(7) A NTP that continues to operate after the closing date established by the secretary shall be subject to legal action by the cabinet as provided by law.

Section 22. ~~[Material Incorporated by Reference. (1) "Consent to Treatment with an Approved Narcotic Drug" form FDA 2635 (7/93); "Report of Theft or Loss of Controlled Substances" form DEA 1305.12 (12/85); U.S. Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.~~

~~(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.~~

Section 23.] Compliance for Currently Operating NTPs. NTPs currently operating at the time this administrative regulation becomes effective shall have ninety (90) days to come into compliance with this administrative regulation.

Section 23. Material Incorporated by Reference. (1) The following material is hereby incorporated by reference:

(a) Consent to Treatment with an Approved Narcotic Drug form FDA 2635 (7/93);

(b) Report of Theft or Loss of Controlled Substances form DEA 1305.12 (12/85); US Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 1, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Thursday, October 22, 1998 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, October 15, 1998, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: 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 - (502) 654-7166

(1) Type and number of entities affected: All programs who offer an approved controlled substance as a narcotic treatment modality.

(2) Direct and indirect cost or savings to those affected:

(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: No public comments have been received.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent from the public comments received: No public comments have been received.

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

1. First year following implementation: Quarterly reporting and standard recordkeeping will be required.

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

(3) Effects on the promulgating administrative body: Reviewing for compliance and recordkeeping for all NTPs.

(a) Direct and indirect cost or savings:

1. First year: No additional direct or indirect costs.

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

3. Additional factors increasing or decreasing costs: As the number of narcotic treatment programs increase, additional staff may be required.

(b) Reporting and paperwork requirements: Reviewing for compliance and recordkeeping for all NTPs.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds shall be used to implement the enforcement of this regulation.

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

(a) Geographic area in which administrative regulation will be implemented: No comments have been received.

(b) Kentucky: No comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because they are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: The benefits to this administrative regulation include the reduction of AIDs and HIV among the intravenous drug using population in Kentucky, as well as establishing greater consistency in program operation policies across narcotic treatment programs.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the spread of AIDs and other infectious diseases among the intravenous drug using population may increase across Kentucky, as well as the breakdown in consistency of program operations of narcotic treatment programs.

(c) If detrimental effect would result, explain detrimental effect: Maintenance and detoxification treatment would not be available to narcotic addicts in the Commonwealth.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied Tiering was not used since the regulation will be applied in a like manner for all individuals or entities affected by it.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1998

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 6:060. Lease of new construction.

RELATES TO: KRS 56.463, 56.800, 56.803

STATUTORY AUTHORITY: KRS 56.463(2), (8), HB 704

NECESSITY, FUNCTION, AND CONFORMITY: HB 704 requires proposed new construction to be considered in state procurement of leased office space pursuant to KRS 56.803 without going through the build-to-suit process, so long as the proposed new construction does not contain provision for a lease-purchase or an option to purchase by the state. This administrative regulation is necessary in order to set minimum requirements for documentation to be submitted with a proposal for lease of new construction.

Section 1. (1) In addition to the information requested in the advertisement made pursuant to KRS 56.803, proposals for new construction in response to invitations to lease office space shall include:

- (a) Documentation of ownership of proposed property (i.e. copy of deed or option to purchase);
 - (b) Scaled plot of the site identifying the location of the proposed building and parking area(s);
 - (c) A vicinity map indicating the location of the site;
 - (d) Scaled or dimensioned floor plan showing the exterior layout of the proposed building, including walls, doors, windows, columns, and any other structural considerations which may affect design of the interior space; and
 - (e) Certification that the property is properly zoned.
- (2) Subsection (1)(a), (b), and (c) of this section shall be submitted with the initial proposal.

(3) Subsection (1)(d) and (e) of this section shall be submitted no later than the date of the site inspection conducted pursuant to KRS 56.803(10).

Section 2. (1) Persons with an option to purchase property may submit a proposal to lease such property if a valid, executed option contract is submitted with the proposal.

(2) If a person submits a proposal to lease property under an option contract and is awarded a lease, the purchase of the proposed property shall be completed and proof in the form of a deed submitted along with the signed lease contract.

JOHN MCCARTY, Secretary
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 21, 1998, at 10 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 October 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by October 14, 1998, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jim Abbott, Director, Division of Real Properties, Finance and Administration Cabinet, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564-2205, FAX (502) 564-8108.

REGULATORY IMPACT ANALYSIS

Contact Person: Jim Abbott, Director

(1) Type and number of entities affected: Prospective lessors offering property for lease to the Commonwealth; anticipate approximately 100 entities per year will be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No 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: Compliance, reporting and paperwork requirements will mirror current lease process. No significant increase or decrease in cost of process is anticipated.

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 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 applies equally to all persons proposing property for lease by the state.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Alcohol
and Drug Counselors
(New Administrative Regulation)**

201 KAR 35:030. Code of ethics.

RELATES TO: KRS 309.1315(14)

STATUTORY AUTHORITY: KRS 309.1315(1), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for certified alcohol and drug counselors. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) An alcohol and drug counselor shall:

- (a) Advance and protect the welfare of the client;
- (b) Respect the rights of persons seeking assistance; and
- (c) Make reasonable efforts to ensure that services are used appropriately.

(2) An alcohol and drug counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, disability, or sexual orientation;

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

- 1. Impair professional judgment;
- 2. Incur a risk of exploitation of the client; or
- 3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of therapy;

(e) Use the professional relationship with a client to further a personal interest;

(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic service if the counselor is unable or unwilling, for an appropriate reason, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of a therapy session without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or ethical proceeding; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) An alcohol and drug counselor shall respect and guard the confidence of each individual client.

(2) An alcohol and drug counselor shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the alcohol and drug counselor is a defendant in a civil, criminal, or disciplinary action arising from the therapy, a confidence may be disclosed only in the course of that action; or

(d) If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.

(3) An alcohol and drug counselor may use client or clinical material in teaching, writing, and public presentations if:

(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) An alcohol and drug counselor shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. An alcohol and drug counselor shall assign credit to all who have contributed to the published material and for the work upon which publication is based. An alcohol and drug counselor shall:

(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principle contribution to a publication shall be identified as the first listed;

(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance;

(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.

Section 4. Professional Competence and Integrity. An alcohol and drug counselor 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 an alcohol and drug counselor.

(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 alcohol and drug counseling;

(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of a certificate;

(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) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board.

(7) An alcohol and drug counselor who is aware of conduct by another certified alcohol and drug counselor that violates this code of ethics shall report that conduct to the Kentucky Board of Certification of Alcohol and Drug Counselors.

(8) An alcohol and drug counselor shall comply with all the policies and procedures of the facilities where he is employed. If there is conflict with the policies or procedures of the facility and this code of ethics, the alcohol and drug counselor shall report this conflict to the Kentucky Board of Certification of Alcohol and Drug Counselors.

Section 5. Responsibility to a Student or Supervisee. (1) An alcohol and drug counselor shall not exploit the trust and dependency of a student or supervisee.

(2) An alcohol and drug counselor shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. An alcohol and drug counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a counselor shall take appropriate professional precautions to ensure judgment is not

impaired and no exploitation occurs.

3. A counselor shall not provide therapy to a student, employee or supervisee.

4. A counselor shall not engage in sexual intimacy or contact with a student or supervisee.

(3) An alcohol and drug counselor shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) An alcohol and drug counselor shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision;

(d) In an educational or training setting if there are multiple supervisors, to a professional colleague who shares responsibility for the training of the supervisee; or

(e) If there is written informed consent previously obtained in writing, information shall be revealed only in accordance with the terms of the consent agreement.

Section 6. Responsibility to a Research Participant. (1) An alcohol and drug counselor performing research shall be aware of federal and state laws and regulations and professional standards governing the conduct of research.

(2) An alcohol and drug counselor performing research shall be responsible for making a careful examination of ethical acceptability in planning studies. To the extent that service to a research participant may be compromised by participation in research, an alcohol and drug counselor, shall seek the ethical advice of a qualified professional not directly involved in the investigation and shall observe safeguards to protect the rights of a research participant.

(3) An alcohol and drug counselor requesting a participant's involvement in research shall inform him of all aspects of the research that might reasonably be expected to influence his willingness to participate. An alcohol and drug counselor shall be sensitive to the possibility of diminished consent when a participant is also receiving clinical service, has an impairment which limits understanding or communication, or when a participant is a child.

(4) An alcohol and drug counselor performing research shall respect a participant's freedom to decline participation in or to withdraw from a research study at any time. This obligation requires special thought and consideration when an alcohol and drug counselor or other member of the research team are in a position of authority or influence over a participant.

(5) An alcohol and drug counselor shall avoid a dual relationship with research participants.

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. When there is a risk that others, including a family member, may obtain access to such information, this risk, together with the plan for protecting confidentiality, is to be explained as part of the procedure for obtaining written informed consent.

Section 7. Financial Arrangements. (1) An alcohol and drug counselor shall make financial arrangements with a client, third-party payor, or supervisee that are reasonably understandable and conform to accepted professional practice.

(2) An alcohol and drug counselor shall:

(a) Not offer or accept payment for a referral;

(b) Not charge an excessive fee for service;

(c) Disclose his fee to a client or supervisee at the beginning of service; or

(d) Represent facts truthfully to a client, third-party payor, or supervisee regarding service rendered.

Section 8. Advertising. An alcohol and drug counselor shall:

(1) Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;

(2) Not use professional identification, including a business card,

office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 9. Environment. An alcohol and drug counselor shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This includes the following:

(1) Allowance for privacy and confidentiality; and

(2) Compliance with any other health and safety requirement according to local, state, and federal agencies.

Section 10. Documentation. An alcohol and drug counselor shall accurately document activity with a client in a timely manner.

Section 11. Interprofessional Relationships. An alcohol and drug counselor shall treat a colleague with respect, courtesy and fairness and shall afford the same professional courtesy to other professionals.

(1) An alcohol and drug counselor shall not offer professional service to a client in counseling with another professional except with the knowledge of the other professional or after the termination of the client's relationship with the other professional.

(2) An alcohol and drug counselor shall cooperate with duly constituted professional ethics committees and promptly supply necessary information unless constrained by the demands of confidentiality.

MICHAEL D. VANCE, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 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 October 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: Mr. 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 certification as an alcohol and drug counselor 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: All certified alcohol and drug counselors must follow this code of ethics.

2. Second and subsequent years: All certified alcohol and drug counselors must follow this 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: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having certified alcohol and drug counselors adhere to this code of ethics.

(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 alcohol and drug counselors 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: This is not applicable to this administrative regulation

(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 Certification of
Alcohol and Drug Counselors
(New Administrative Regulation)**

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.085(1)(b) authorizes the board to promulgate an administrative regulation requiring certified alcohol and drug counselors to complete continuing education requirements as a condition of renewal of their certification. 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) "Academic courses offered by an accredited postsecondary institution" means:

(a) An alcohol and drug counseling course, designated by title or content, beyond the undergraduate level; or

(b) An academic course, relevant to alcohol and drug counsel-

ing, beyond the undergraduate level.

(2) "Approved" means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.

(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

(5) "Provider" means an organization approved by the Kentucky Board of Certification for Certified Alcohol and Drug Counselors for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of alcohol and drug counseling as determined by the board.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of sixty (60) continuing education hours shall be accrued by each person holding certification during the three (3) year certification period for renewal with the following exceptions:

(a) A person holding certification whose renewal date is before January 1, 2000 shall receive twenty (20) hours of continuing education for that renewal only;

(b) A person holding certification whose renewal date is after January 1, 2000 and before January 1, 2001 shall receive forty (40) hours of continuing education for that renewal only.

(2) All hours shall be in or related to the field of alcohol and drug counseling.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a certified alcohol and drug counselor. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided by any of the following providers shall be deemed to be relevant to the practice of alcohol and drug counseling and shall be approved without further review by the board:

(a) The National Association of Alcohol and Drug Abuse Counselors (NAADC);

(b) The American Counseling Association (ACA);

(c) The National Board for Certified Counselors (NBCC);

(d) The International Certification and Reciprocity Consortium (ICRC);

(e) The Kentucky Department of Mental Health, Division of Substance Abuse;

(f) The Jefferson Alcohol and Drug Abuse Center (JADAC) Training Institute;

(g) The Kentucky School of Alcohol and Drug Studies; and

(h) Academic courses as set forth in Section 1(4) of this administrative regulation. A general education course, elective or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it is relevant:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or other service provider approved by the board;

(b) A program or academic course presented by the certificate holder. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) A relevant publication in a professionally recognized or juried publication. Continuing education hours shall be granted for relevant publications as follows:

1. Five (5) continuing education hours for each published abstract or book review;

2. Ten (10) continuing education hours for each published article;

3. Twenty (20) continuing education hours for each book chapter

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or monograph; and

4. Forty (40) continuing education hours for each published book.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval 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 5 of this administrative regulation.

(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 art therapy;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program:

- (a) A published course or seminar description;
- (b) The name and qualifications of the instructor;
- (c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (d) Number of continuing education hours requested;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) Application for continuing education credits approval.

Section 6. Responsibilities and Reporting Requirements of Certificate Holders. (1) During the certification renewal period, the board shall require up to fifteen (15) percent of all certificate holders to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A certificate holder shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify his own continuing education needs and seek activities that meets those needs;
- (c) Seek ways to integrate new knowledge, skills and activities;
- (d) Select approved activities by which to earn continuing education hours;
- (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
- (f) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years from the date of the renewal; and
- (g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

- (a) Transcript;
- (b) Certificate;
- (c) Affidavit signed by the instructor;
- (d) Receipt for the fee paid to the sponsor;
- (e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:

- (a) Refusal to renew certification;
- (b) Suspension of certification; or
- (c) Revocation of certification.

Section 7. Carry-over of Continuing Education Hours, Prohibited. Continuing education hours earned in excess of those required

under Section 2 of this administrative regulation shall not be carried over into the immediately following certification renewal period.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the person holding certification shall have the right to appeal the board's decision.

(2) An appeal shall be:

- (a) In writing;
- (b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
- (c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability of the certificate holder;
- (b) Illness of the certificate holder or an immediate family member;
- (c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

- (a) Submitted by the person holding certification; and
- (b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) 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 certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement or reactivation of certification shall submit evidence of sixty (60) hours of continuing education within the three (3) year period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the person does not have the continuing education hours required in subsection (1) of this section, the board shall reinstate the certification and the person shall obtain sixty (60) hours of continuing education within six (6) months of the date on which certification is reinstated. Failure to provide documentation of the required continuing education within the required six (6) months shall result in termination of the certification.

(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.

MICHAEL D. VANCE, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 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 October 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: Mr. 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 certification as an alcohol and drug counselor 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: All certified alcohol and drug counselors must have the required continuing education in order to renew certification.

2. Second and subsequent years: All certified alcohol and drug counselors must have the required continuing education in order to renew certification.

(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: Continuing education will be processed with renewals.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having certified alcohol and drug counselors adhere to this 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: The credentialing of alcohol and drug counselors 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: This is not applicable to this administrative regulation

(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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(New Administrative Regulation)

735 KAR 2:010. Definitions.

RELATES TO: KRS 12.290, KRS 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, HB 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets the definitions necessary to implement the interpreter referral services program for use by state agencies.

Section 1. (1) "American Sign Language" (ASL) means a language whose medium is visual rather than aural. Like any other language, ASL has its own unique vocabulary, idioms, grammar and syntax, which are different from English. The elements of this language (the individual signs) consist of the handshape, position, movement and the orientation of the hands to the body and each other. ASL also uses ace, direction and speed of movements, and facial expression to convey meaning.

(2) "Assigned interpreter" means the interpreter who commits to provide interpreting services for a particular event. Once an interpreter accepts the assignment, verbally or otherwise, it is a binding agreement between the referral agency and the interpreter.

(3) "Assignment" means an event interpreted for the enhancement of communication between deaf and hearing individuals.

(4) "Certified interpreter/transliterator" means a sign language, oral, or cued speech interpreter/transliterator who was awarded certification by demonstrating an advanced level of expressive and receptive skills. Certified interpreters/transliterators have a thorough knowledge of at least one (1) of the codes of ethics on interpreting.

(5) "Close visual range interpreting" means an interpreting technique used with deaf people with limited vision. Signing space may also be limited, according to the individual's particular needs for communication.

(6) "Contracted interpreter" means freelance interpreter.

(7) "Code of ethics" means principles of ethical behavior set by the national certifying organizations to protect and guide interpreters and transliterators and hearing and deaf consumers.

(8) "Cued speech" means a method of communication for use with and by deaf and hard of hearing persons, in which eight (8) configurations and four (4) positions of one (1) (either) hand are used to supplement the visible manifestations of natural speech.

(9) "Deaf and hard of hearing" people are individuals who have hearing disorders such that they cannot hear and understand speech clearly through the ear alone, with or without hearing aids. This may include but is not limited to deaf, hard or hearing, deaf-blind, late deafened, recently deafened, oral deaf, etc.

(10) "Deaf interpreter" means a deaf or hard of hearing individual, who is able to assist in providing an accurate interpretation between standard sign language and variants of sign language (including home signs) by acting as an intermediary between a deaf or hard of hearing person and an interpreter/transliterator.

(11) "Emergency" means a situation of an urgent nature in which the consumer or client determine that the delay of the event for more than twenty-four (24) hours is likely to result in injury or loss.

(12) "Interpretation" means the process of transmitting spoken English into American Sign Language and/or gestural communication (voice-to-sign); and the process of transmitting American Sign Language or gestural communication into spoken English (sign-to-voice).

(13) "No show assignment" means when either the consumer (deaf) or the client (state agency) does not appear at the scheduled event.

(14) "Oral interpreting" means facilitating a mode of communication.

tion utilizing speech, speech-reading and residual hearing as a primary means of communication and using situational and culturally appropriate gestures, without the use of sign language.

(15) "Preferred mode of communication" means the method of communication that the deaf or hard of hearing individual is most expressive and comfortable in using. This may be American Sign Language, a manual form of English, writing, speaking, or any other mode of communication.

(16) "Referral service" means a service that specializes in coordinating interpreting services and acts as an intermediary between the interpreter and the direct consumers of services.

(17) "Replacement interpreter" means in the event of a schedule conflict, illness or other unforeseen conflict, the interpreter sent in to replace the assigned interpreter for a specific event.

(18) "Staff interpreter" means an interpreter who works exclusively for and is considered an employee of a particular agency/organization.

(19) "State agency" means all agencies of: the executive branch, with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(20) "Tactile interpreting" means a communication technique used by and with deaf-blind and deaf people with limited vision. The interpreter signs in a normal fashion and a deaf-blind person puts their hand (or hands) on top of the signer's hand (or hands) to feel the shape, movement and location of the signs.

(21) "Team interpreting" means the utilization of two (2) or more interpreters functioning as equal members of a team, rotating responsibilities at prearranged intervals, and providing support and feedback to each other.

(22) "Transliteration" means the process of transmitting spoken English into any one (1) of the several English-related or English oriented varieties of sign language (voice-to-sign); and the process of transmitting English-related or English-oriented varieties of sign language into spoken English (sign-to-voice).

(23) "Traditional interpreting services" means the interpreter appears at the event in person and provides interpreting services on site.

(24) "Nontraditional interpreting services" means the utilization of videoconferencing technology to "bring" the interpreter to the event, without needing the interpreter to travel to the site of the event.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies

which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Service and won't require hours of agency staff time calling to locate available interpreters.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (two proposed at this time) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: This regulation simply sets forth the definitions for the implementation of a new Interpreter Referral Services program.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate.

ate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(New Administrative Regulation)

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the Interpreter Referral Services Program parameters and criteria for receiving and providing these services.

Section 1. (1) The KCDHH Interpreter Referral Services are offered to assist state agencies in meeting their legal and ethical obligations under KRS 12.290, PL 93-112 (the Rehabilitation Act), and PL 101-336 (commonly known as the Americans with Disabilities Act) when such services are:

- (a) Requested by an individual who is deaf or hard of hearing in order to receive public services; or
- (b) Requested by a state agency employee who is deaf or hard of hearing; or
- (c) Required under the provisions of PL 101-336 (the Americans with Disabilities Act), PL 93-112 (the Rehabilitation Act) and its subsequent amendments, and KRS 12.290; or
- (d) Required to provide accessibility at public events as defined by PL 101-336 or 93-112.

(2) Participation in the KCDHH Interpreter Referral Services Program is voluntary.

(3) The services of a qualified interpreter/transliterators shall be provided at no cost to the deaf or hard of hearing consumer.

(4) The KCDHH shall comply with KRS Chapter 45A in employing staff and contract interpreters with the KCDHH Interpreter Referral Services Program.

(5) Where it is known and feasible, the KCDHH Interpreter Referral Service shall honor the preferred communication mode of the deaf or hard of hearing consumer.

(6) The KCDHH may assign two (2) or more interpreters as appropriate for assignments that are longer than one (1) hour, in accordance with the standard practices of "Team Interpreting".

(a) The standard practices of "Team Interpreting" document is incorporated by reference.

(b) This standard practices of "Team Interpreting" document can be obtained from the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(7) The KCDHH will assign deaf interpreters in accordance with standard practices in the interpreting profession.

(a) The standard practices of "Use of a Certified Deaf Interpreter" document is incorporated by reference.

(b) This standard practices of "Use of a Certified Deaf Interpreter" document can be obtained from the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(8) Nationally-certified interpreters shall be preferred in working for the KCDHH Interpreter Referral Services;

(9) Interpreter fees to state agencies will be negotiated between the state agency and the interpreter on an individual basis. The KCDHH Interpreter Referral Service will provide the referral, but does not dictate hourly fees nor administer billing for services.

(10) The judicial branch of the Kentucky state government, including the Administrative Office of the Courts, may be exempt from complying with KRS Chapters 18A and 45A. Therefore, the procurement practices listed here would not apply to the judicial branch.

(11) The KCDHH will respond to all requests for interpreter services; however, as KCDHH recognizes that the demand for interpreting services exceeds the supply, KCDHH does not guarantee that all requests will be filled.

(a) Requests for interpreter services will be filled on a first-come, first-serve basis.

(b) The exception will be requests for interpreters received on an emergency basis. If the KCDHH is not able to fulfill a request by 12 noon, two (2) working days prior to the date of the unfulfilled assignment, the Interpreter Referral Services staff will contact the agency requesting the services and offer the following options:

1. The KCDHH Interpreter Referral Services staff continue to seek an interpreter to fulfill the assignment, with the understanding that it is unlikely to be filled; or

2. The KCDHH Interpreter Referral Services staff will cease seeking an interpreter and the agency may utilize their own contacts to locate a qualified interpreter; or

3. The requesting agency can reschedule the assignment and the KCDHH Interpreter Referral Services staff will seek a qualified interpreter to fulfill the rescheduled assignment.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterators services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(New Administrative Regulation)

735 KAR 2:030. Interpreter qualifications.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets qualifications of the interpreters utilized by the Interpreter Referral Services Program.

Section 1. (1) Preferably, sign language and oral interpreters, both staff and freelance, shall possess at least one (1) nationally recognized interpreter certification from the:

(a) National Association of the Deaf (NAD); or

1. The certification standards of the National Association of the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791.

(b) National Registry of Interpreters for the Deaf (RID).

1. The certification standards of the National Registry of Interpreters for the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(2) Preferably, cued speech transliterators shall possess a national certification from the National Training Evaluation and Certification Unit (TECUnit).

(a) The certification standards of the national TECUnit are incorporated by reference.

(b) These standards may be inspected or obtained by contacting the Cued Speech Transliterator National Training, Evaluation and Certification Unit (TECUnit) at 1112 Spotswood Drive, Silver Spring, Maryland 20905. The phone number is: (301) 236-4863 V/TTY.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterators services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of ob-

taining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(New Administrative Regulation)**

735 KAR 2:040. Interpreter protocols.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the interpreter protocols.

Section 1. (1) All interpreters, staff and freelance, shall:

(a) Keep all assignment related information strictly confidential;

(b) Be impartial to the proceedings;

(c) Recognize and work within their range of abilities and not accept assignments beyond their skill level;

(d) Recognize when the communication ability or mode of the deaf person(s) may require the additional skills offered by a certified deaf interpreter and promptly communicate this need to the KCDHH Interpreter Referral Services staff;

(e) Be punctual and arrive at the assignment location fifteen (15) minutes before the scheduled starting time to arrange logistics and pre-conference with the consumers and other interpreters.

(2) KCDHH Interpreter Referral Services interpreters will display professional demeanor and conduct by:

(a) Wearing professional clothing appropriate for the work being performed, such as skirts/dresses, slacks and jackets, or business suits.

(b) Treating deaf, hard of hearing and hearing consumers pleasantly, fairly and with respect.

(3) All contract and staff interpreters will comply with the code of ethics of either the National Registry of Interpreters for the Deaf or the National Association of the Deaf, which are incorporated by reference.

(a) The National Association of the Deaf Code of Ethics may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791

(b) The National Registry of Interpreters for the Deaf Code of Ethics may be inspected or obtained by contacting the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(4) Assignment "ownership".

(a) If a contracted interpreter is unable to fill the assignment because of illness or other unforeseen conflicts, they must contact the referral service as soon as they are aware of the conflict.

(b) The staff of the KCDHH Interpreter Referral Services is responsible to contact and attempt to secure the replacement inter-

preters for the assignment.

(5) The KCDHH Interpreter Referral Services Program, pending availability of resources, may provide professional development opportunities for all contract and staff interpreters. Such professional development opportunities may include, but are not limited to:

- (a) Mentoring program;
- (b) Diagnostic assessment and feedback; and
- (c) Support for interpreter training opportunities.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterators services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

EDUCATION, ARTS, AND HUMANITIES CABINET Commission on the Deaf and Hard of Hearing (New Administrative Regulation)

735 KAR 2:050. Processing of requests for services.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the process for requesting services. Requests for interpreting services must come from an entity as defined in 735 KAR 2:020 (1) and include the following information:

Section 1. (1) Requests for interpreting services must come from an entity as defined in 735 KAR 2:020(1) and include the following information:

- (a) Date and time of interpreted event;
- (b) Expected length of the interpreted event;
- (c) Consumer (deaf) and client (agency) names;
- (d) Consumer communication preference (if known);
- (e) Assignment location;
- (f) Type of event to be interpreted, i.e. one-to-one situation, small group meeting, or platform presentation;
- (g) On-site contact person and phone number;
- (h) Any request for a specific interpreter;
- (i) Any pertinent billing information including, at a minimum:
 - 1. Purchase order/interaccount numbers;
 - 2. Authorizing agency contact person;
 - 3. Billing address and phone number(s);
- (j) Any additional information such as directions to the event location, or identification of special needs such as tactile interpreting requests, specialized vocabulary, etc.

(2) Entities may submit requests for interpreting services to the KCDHH by one (1) of the following means:

- (a) Phone calls made directly to the staff of the KCDHH Interpreter Referral Services;
- (b) Faxed form;
- (c) Electronic form submittal via email or the KCDHH WWW home page;
- (d) Letter;
- (e) In person; or
- (f) Videoconferencing.

(3) In making a request for interpreting services from the KCDHH Interpreter Referral Services, the requesting agency is entering a binding agreement with the KCDHH under the auspices of KRS Chapter 45A with all terms and conditions as outlined in this administrative regulation.

(4) KCDHH can best serve agencies that submit requests for interpreting services at least two (2) weeks in advance of the assignment date.

(5) KCDHH recognizes the need for an immediate response to some interpreting requests, i.e. pretrial services, and will make every effort to fill the request.

(6) The KCDHH Interpreter Referral Services staff, upon receiving a detailed request for an interpreting assignment, will locate an interpreter for the assignment by scheduling:

- (a) Staff interpreters, if available and qualified; then
- (b) Contract interpreters, if available and qualified.

(7) The KCDHH Interpreter Referral Services Program will make every attempt to provide the requested interpreter whenever a specific interpreter is named in a request. However, the KCDHH cannot guarantee that it will be able to successfully honor every request.

(8) The KCDHH recognizes that the demand for interpreting services exceeds the existing supply of staff and freelance interpreters; therefore, the KCDHH will hire and assign interpreters based on the following criteria, in order of importance:

- (a) Those who hold a current and valid certification awarded by a nationally recognized organization;
- (b) Highly qualified, based on:
 - 1. Years of interpreting experience;
 - 2. Demonstrable interpreting skill, as evidenced by screening, or precertification level;
 - 3. Consumer preference;
 - 4. Having no financial or personal conflict of interest, as defined by KRS Chapter 45A; and
 - 5. Other criteria, as may be appropriate for the specific assignment.

(9) The KCDHH Interpreter Referral Services staff will notify the state agency of the name of the assigned interpreter(s).

(10) Due to the high demand for interpreting services and for specialized skill, the KCDHH Interpreter Referral Services Program reserves the right to reassign interpreters, as appropriate, based on skill level and qualifications. In the event that an assigned interpreter should be reassigned, the KCDHH Interpreter Referral Services staff will notify the state agency of the name of the replacement interpreter.

(11) The KCDHH Interpreter Referral Services staff will notify the interpreter of the details of the assignment, including any communication preferences, special terminology, the date, the time and the location prior to the actual date of the assignment.

(12) The client or consumer has the right to refuse the services of an interpreter and request a replacement. If the client or consumer decides to request a replacement interpreter at the time of the scheduled event, the KCDHH Interpreter Referral Service will make every effort to fill the request. The client and consumer may need to reschedule the event, if there is no readily available replacement interpreter.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterators services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH

Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(New Administrative Regulation)

735 KAR 2:060. Grievance procedures.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes a proc-

ess for receiving and handling complaints against interpreters, state agencies or the referral services.

Section 1. (1) Grievances may be filed against the:

(a) Interpreter;

(b) State agency; or

(c) KCDHH Interpreter Referral Services.

(2) All grievances shall be submitted in writing or on video within ninety (90) days of the event in question to the Executive Director of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601 and must include:

(a) Name, address, and phone number of person filing the grievance;

(b) Name and role (i.e., interpreter, state agency) of person(s) against whom the grievance is being filed;

(c) Date, time and location of the alleged violation;

(d) Description of the alleged violation and, if known, reference made to the NAD or RID Code of Ethics that were allegedly violated; and

(e) Signature of the complainant.

(3) Anonymous grievances will not be recognized.

(4) The KCDHH Interpreter Referral Services staff will investigate the alleged grievance within thirty (30) days of receiving the grievance.

(5) Copies of the grievance shall be made available to the:

(a) Complainant;

(b) Respondent (person grievance is against);

(c) Witnesses; and

(d) All other pertinent parties to the grievance or the investigation.

(6) The KCDHH Interpreter Referral Services staff shall submit a written decision within sixty (60) days of receiving the grievance which may result in:

(a) Mediation among the involved parties; or

(b) The grievance being referred to the national certifying body, if the grievance is of serious nature; or

(c) Dismissal of grievance; or

(d) The KCDHH Interpreter Referral Service has the right to discontinue utilizing the services of an interpreter based on the findings of a grievance.

(7) If the decision of the KCDHH Interpreter Referral Services Program staff is appealed, the KCDHH Interpreter Services Advisory Board shall review the decision and make a ruling.

(8) If the decision of KCDHH Interpreter Services Advisory Board is appealed, then the Executive Director of the KCDHH shall review the decision and make a ruling.

(9) If the decision of the Executive Director of the KCDHH is appealed, then the Commissioners of the KCDHH shall review the decision and make a ruling.

(10) If the decision of the Commissioners of the KCDHH is appealed, then the KCDHH shall comply with all provisions of KRS Chapter 13B.

(11) All records of grievances filed and the proceedings shall be kept at the KCDHH offices in accordance with the Open Records and Open Meetings Law.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on ordinary regulations shall be held on October 26, 1998 South Room of the Best Western, 80 Chenault Drive, Frankfort, Kentucky. The public hearing will be from 8:30 a.m. to 11:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 an opportunity to comment on the ordinary regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the ordinary regulations. Send written notice of intent to be heard at the public hearing or

written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so that promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY, (502) 573-3594 FAX.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(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 and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(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 costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside state agencies except if a grievance is filed. It must be submitted in writing.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

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

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(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) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter

Referral Services.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

MOREHEAD STATE UNIVERSITY (New Administrative Regulation)

755 KAR 1:070. Affiliated corporations.

RELATES TO: KRS 164A.610

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. The Morehead State University Board of Regents, under the provisions of KRS 164A.560 elects to organize and operate one (1) or more affiliated corporations in accordance with KRS 164A.610.

DR. RONALD G. EAGLIN, President

DR. MICHAEL SEELIG, University Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 14, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1998, at 10 a.m., at Morehead State University, Howell McDowell 111, Morehead, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Porter Dailey, Vice President for Administration and Fiscal Services, 202 Howell-McDowell, Morehead State University, Morehead, Kentucky 40351, Phone: (606) 783-2053, Fax: (606) 783-5011.

REGULATORY IMPACT ANALYSIS

Contact Person: Porter Dailey

(1) Type and number of entities affected: The two entities affected

by this new regulation are Kentucky Folk Art Center, Inc., and Morehead State University.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The KFAC, Inc., financial statements will be audited by the university's external auditor and compliance statements made and included in the annual audit.

(4) Assessment of anticipated effect on state and local revenues: Additional sales tax receipts of approximately \$2,000 annually are anticipated as museum store sales increase as a result of more visitors to the center. Visitors will also purchase other goods and services in the community.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund, private gifts, and grants.

(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: Remain a nonaffiliated foundation of university: rejected because the KFAC, Inc., could not effectively function without the support of the university.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The university has uniform financial practices and tiering is not applicable given the purpose of the administrative regulation.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:160. Creditable coverage for health insurance.

RELATES TO: 45 CFR 146.113, 42 USC 300gg, 1998 Ky. Acts ch. 496 sec. 1, 4

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496 sec. 1(6)(a)9, 4(4)(c)1, 4(4)(d)

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. 1998 Ky. Acts ch. 496, sec. 1(6)(a)9 incorporates a "public health plan"

within the definition of "creditable coverage". 1998 Ky. Acts ch. 496, sec. 1(6)(a)9 requires the commissioner to define public health plan. In addition, 1998 Ky. Acts ch. 496, sec. 4(4)(c)2 permits the commissioner to specify categories of benefits. In accordance with 1998 RS HB 315, sec. 4(2)(c), the periods of creditable coverage within these categories of benefits may be used to reduce the preexisting condition exclusion applicable to the participant or beneficiary. Lastly, 1998 Ky. Acts ch. 496, sec. 4(4)(d) permits the commissioner to specify how periods of creditable coverage may be certified.

Section 1. Definitions. "Public health plan" means any plan established or maintained by a state, county, or other political subdivision of a state that provides health insurance coverage to individuals who are enrolled in the plan.

Section 2. Categories of Benefits. A group health plan or health insurer offering group health coverage may use the following categories of benefits as creditable coverage, the aggregate periods of which may be used to reduce or eliminate the waiting period for a preexisting condition exclusion:

- (1) Mental health;
- (2) Substance abuse treatment;
- (3) Prescription drugs;
- (4) Dental care; and
- (5) Vision care.

Section 3. Creditable Coverage Certification. (1) The certification for periods of creditable coverage with respect to an insured covered under an individual health benefit plan shall be in the form provided in the Certificate of Individual Health Plan Coverage which is incorporated by reference into this administrative regulation.

(2) The certification for periods of creditable coverage with respect to an insured enrolled in a group health benefit plan shall be in the form provided in the Certificate of Group Health Plan Coverage which is incorporated by reference into this administrative regulation.

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

(a) "Certificate of Individual Health Plan Coverage (05/1998 Edition)"; and

(b) "Certificate of Group Health Plan Coverage (05/1998 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: August 13, 1998

FILED WITH LRC: August 18, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1998, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032 ext. 249, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This administrative regulation will also affect prospective insureds who may be enrolled under a group or individual health benefit plan and who may have a preexisting condition. The department has no way of determining how many prospective insureds may 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: 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: A Certificate of Individual Health Plan Coverage or a Certificate of Group Health Plan Coverage may be required if an individual becomes eligible for coverage under a health plan that excludes coverage for certain preexisting medical conditions. This certificate may also be required if medical advice, diagnosis, care, or treatment was recommended or received for a condition within a six-month period prior to coverage under a new health plan.

2. Second and subsequent years: Certificates may be required whenever an individual becomes eligible for coverage under a health plan that excludes coverage for certain preexisting medical conditions. This could apply in the second and subsequent years after implementation of this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department does not anticipate any major impact upon the department's costs or savings due to the implementation of this administrative regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Should a complaint arise regarding an insured's creditable coverage, the department will be required to follow complaint procedures and complete the appropriate paperwork. Otherwise, there will be no reporting or paperwork requirements for the department due to the implementation of this administrative regulation.

(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. 496, Section 1(6)(a)9 specifically requires the Commissioner of Insurance to define public health plan as that term relates to creditable coverage. In addition, 1998 Ky. Acts ch. 496, Section 4 permits the commissioner to specify the categories of benefits that may be used to reduce the waiting period

for a preexisting condition exclusion applicable to a health plan participant or beneficiary. Lastly, 1998 Ky. Acts ch. 496, Section 4(4)(d) permits the commissioner to specify how periods of creditable coverage may be certified. An administrative regulation is necessary in order to establish the definitions and guidelines related to creditable coverage. 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 clarify the circumstances under which an insured may be credited for prior health coverage in order to avoid the application of insurance contract provisions that exclude the coverage of certain preexisting conditions.

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

(c) If detrimental effect would result, explain detrimental effect: Absent this administrative regulation, there would be no categories of benefits that could be credited in order for an insured avoid or reduce the waiting period for coverage of certain preexisting medical conditions.

(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 that issue, deliver, or renew individual or group health benefit plans in Kentucky. This administrative regulation will also apply to all individuals who may be enrolled under an individual or group health plan. Application of this administrative regulation to these individuals does not require the application of tiering.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)**

806 KAR 17:180. Standard health benefit plan and comparison format.

RELATES TO: 1998 Ky. Acts ch. 496, secs. 2 -7, 18, 49

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496, secs. 7(1), 7(7)(a)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 7(1) mandates the commissioner to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. 1998 Ky. Acts ch. 496, sec. 7(7)(a) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other offered comparable plans. 1998 Ky. Acts ch. 496, sec. 7(7)(a) requires that the benefit comparison format include style, arrangement, overall appearance, and content of the benefit comparisons.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.

(2) "HMO" means a health maintenance organization product type.

(3) "POS" means a point-of-service product type.

(4) "PPO" means a preferred provider organization product type.

(5) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders established by the Department of Insurance and the Health Insurance Advisory Council in accordance with 1998 Ky. Acts ch. 496, sec. 7 and any other health insurance benefit established by the General Assembly.

Section 2. Standard Benefits Comparison Format. (1) At the time of initial solicitation of health insurance coverage in the individual or nonemployer small group markets, the person soliciting the

product shall complete and deliver a benefit comparison form applicable to the product being solicited as follows:

(a) A FFS health benefit plan shall be compared to the FFS standard benefit plan by using the Fee-for-Service Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(b) A HMO health benefit plan shall be compared to the HMO standard benefit plan by using the HMO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(c) A POS health benefit plan shall be compared to the POS standard benefit plan by using the POS Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(d) A PPO health benefit plan shall be compared to the PPO standard benefit plan by using the PPO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(2) An insurer shall produce each form required by subsection (1) of this section and supply each form to each person who solicits health insurance coverage for the insurer in the individual and non-employer small group markets.

(3) In lieu of using a form required by subsection (1) of this section, an insurer may use a form that is substantially similar to a comparison form incorporated by reference into this administrative regulation. An insurer may modify a benefit comparison form required by subsection (1) of this section in a manner that will:

(a) Provide additional comparative information;

(b) Compare multiple health benefit plans; or

(c) Disclose that a sample premium comparison is shown on the benefit comparison form and inform the prospective applicant that a specific premium comparison will be provided upon receipt of the information necessary to generate an accurate comparison.

(4)(a) For each product type listed in subsection (1) of this section, the person soliciting health insurance coverage shall compare the standard health benefit plan exclusions to the exclusions in the health benefit plan being solicited by using the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions", which is incorporated by reference into this administrative regulation. In lieu of using the exclusion comparison form incorporated by reference, the insurer may use a form that is substantially similar to the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions."

(b) With respect to the exclusions comparison form required pursuant to subsection (1)(a) of this section, the person soliciting health insurance coverage shall:

1. Witness the signature of the prospective applicant on the exclusions comparison form;

2. Sign the exclusions comparison form;

3. Date the exclusions comparison form as of the date of solicitation; and

4. Attach the exclusions comparison form to the applicable product comparison form completed pursuant to subsection (1) of this section.

(c) The person soliciting health insurance coverage shall deliver a copy of each completed benefit comparison form, together with a copy of the completed and signed exclusions comparison form, to the prospective applicant and to the insurer whose product is being solicited.

(5) A benefit comparison form shall not be required if an insurer is marketing only the standard health benefit plan.

Section 3. Modification Process. (1) The standard health benefit plan and each comparison form shall remain in effect until July 15, 1999, and thereafter until such time as the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan and each comparison form may be modified each successive year after July 15, 1999. Each modification shall apply to each policy or certificate issued or renewed on or after July 15 of each year.

(3) Any interested person wishing to make a recommendation for modification of the standard plan shall:

(a) Submit their recommendation, in writing, to the Kentucky Department of Insurance, Division of Life and Health, by November

30 of the year preceding the year in which each modification is recommended for implementation.

(b) Explain the need for each recommended modification.

(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Within a reasonable time after November 30 of each year:

(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration; and

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with 1998 Ky. Acts ch. 496, sec. 49;

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a health benefit plan shall:

(a) Implement each modification to the standard health benefit plan and each benefit comparison form prescribed by the department; and

(b) Amend each policy form and rate filing to include every modification to the standard health benefit plan and each benefit comparison form.

(c) Complete and attach Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings" to each health benefit plan filed with the department.

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

(a) "Fee-for-Service Health Benefit Plan Comparison Form (1998 Edition)";

(b) "HMO Health Benefit Plan Comparison (1998 Edition)";

(c) "POS Health Benefit Plan Comparison Form (1998 Edition)";

(d) "PPO Health Benefit Plan Comparison Form (1998 Edition)";

(e) "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions (1998 Edition)";

(f) Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings (1998 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: September 11, 1998

FILED WITH LRC: September 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1998, at 10 a.m. (ET) at the Kentucky Department of Insurance. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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: 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: This administrative regulation will affect the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This administrative regulation will also affect those who solicit health insurance coverage in the individual and small group markets. Currently, there are approximately 29,000 agents who are authorized to solicit health insurance coverage 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 will require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Lastly, insurers will be required complete and attach Form LH-35 to each health benefit plan filed with the department.

2. Second and subsequent years: The paperwork requirements for the first year following implementation of this administrative regulation will continue for the second and subsequent years. In addition, insurers may be required to amend policy forms and rate filings to comply with any modifications to the standard health benefit plan and the benefit comparison forms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will require the department to collect and review recommendations for additions, deletions, or corrections to the standard health benefit plan and the benefits comparison format. The department will be required to either accept or decline the recommended modifications to the plan and comparison forms. The department anticipates that the cost of this review will be minimal.

2. Continuing costs or savings: The department will be required to review recommended modifications to the standard plan and comparison forms on an annual basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department currently receives and reviews health benefit plan form filings submitted by insurers. Form LH-35, which is required by this administrative regulation, will assist the department in this review. Also, beginning in the year 1999 and every year thereafter, the standard health benefit plan may be modified. With the assistance of the Health Insurance Advisory Council, the department will review recommendations for modification of the standard health benefit plan and either accept or decline to implement the recommendations in writing.

(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. 496 requires the department to promulgate an administrative regulation that establishes the standard health benefit plan and the format for the comparison of health plan benefits. 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 assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans offered by insurers. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect of 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 there would be no uniform comparison benefit form that the consumers of health insurance coverage could utilize to compare the standard health benefit plan and other health benefit plans being offered. As a result, there would be fewer informed decisions with regards to the purchase of health insurance coverage in the state of Kentucky. Also, if this administrative regulation were not implemented there would be no procedures specified for modifying the standard health benefit plan.

(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 that issue, deliver, or renew health benefit plans in Kentucky. Neither is tiering applied with respect to persons soliciting health insurance coverage since this administrative regulation applies to all persons soliciting health insurance coverage to individuals or nonemployer small groups in Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:220. Approval criteria and requirements for reentry into the Kentucky health insurance market.

RELATES TO: 42 USC 300gg sec. 2742, 1998 Ky. Acts ch. 496 sec. 8

STATUTORY AUTHORITY: KRS 304.2-110

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 insurance code. 1998 Ky. Acts ch. 496, sec. 8 provides that an insurer that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner for approval to reenter the Kentucky market. The Commissioner of Insurance is required to either approve or disapprove an insurer's request to reenter the Kentucky market. This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer's request to reenter the Kentucky market. This administrative regulation is also necessary to assure that the market reentry provisions in 1998 Ky. Acts ch. 496 conform to the market reentry provisions in 42 USC 300gg, sec. 2742.

Section 1. Request for Amnesty. Each insurer wishing to apply for approval to reenter this state to engage in health insurance business in accordance with 1998 Ky. Acts ch. 496, sec. 8 shall provide the following to the Commissioner of Insurance:

(1) A copy of the original notice from the insurer to the department notifying the department of the insurer's withdrawal from the health insurance market;

(2) A statement identifying any existing health benefit plan in Kentucky and describing the health benefit plan by stating whether the plan is:

- (a) Individual;
- (b) Small group;
- (c) Large group; or
- (d) Association;

(3) A statement identifying in which of the following markets the insurer intends to participate:

- (a) Individual;
- (b) Guaranteed Acceptance Program;
- (c) Small group;
- (d) Large group; or
- (e) Association;

(4) If the insurer will be utilizing a network, a description of the service area;

(5) A description of the method of distribution for each product that will be marketed;

(6) A statement indicating the anticipated date for marketing new plans; and

(7) A copy of the insurer's audited financial statement for the three (3) years prior to the insurer's request for amnesty.

Section 2. (1) An insurer's anticipated date for marketing new plans shall not be more than ninety (90) days after the insurer's request for reentry into the health insurance market.

(2) Prior to the expiration of the ninety (90) day period in subsection (1) of this section, the insurer shall file the following with the Department of Insurance:

- (a) Rates for each product to be marketed;
- (b) Each form that will be utilized for each product; and

(c) An affidavit from an officer of the company attesting to the fact that the company will be actively marketing each product for which rates and forms were filed with the department.

(3) The receipt by the Department of Insurance of a request for amnesty tolls the deadline for returning to the health insurance market provided that all information required pursuant to Section 1 of this administrative regulation is received by the department within two (2) weeks of the date the request for amnesty is received.

Section 3. Approval for Amnesty. (1) The commissioner shall not approve an insurer's request for amnesty pursuant to 1998 Ky. Acts ch. 496, sec. 8 if:

(a) The commissioner has not received all information required by Section 1 of this administrative regulation; and

(b) The insurer is prohibited by 42 USC 300gg, sec. 2742 from reentering the health insurance market in this state.

(2) The commissioner shall notify each insurer, in writing, of the decision to approve or disapprove the insurer's request for amnesty pursuant to 1998 Ky. Acts ch. 496, sec. 8.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 18, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1998, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032 ext. 249, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 34 insurers that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business 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 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: Insurer's requesting to reenter the Kentucky health insurance market will be required to submit information to the commissioner regarding the products to be marketed, the method of product distribution, description of the service areas to be utilized, financial status, a copy of the original notice of withdrawal, and a description of any existing health benefit plan in Kentucky. The insurer approved to reenter the Kentucky market must also file rates and forms for the products to be marketed.

2. Second and subsequent years: Insurer's may request reentry into the Kentucky health insurance market until January 1, 1999. Each insurer requesting reentry into the Kentucky market will be required to file the information outlined in the administrative regulation until the January 1, 1999, deadline.

(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 Department of Insurance will be required to review the information submitted by insurers requesting to reenter the Kentucky health insurance market. The department must also determine whether an insurer's request to reenter the Kentucky market should be approved or disapproved.

(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. 496 requires the Commis-

sioner of Insurance to approve or disapprove an insurer's request to reenter the Kentucky health insurance market. In order to appropriately evaluate whether or not an insurer should be permitted to reenter the Kentucky market, the commissioner must establish criteria and filing requirements for the insurer. Also, this administrative regulation was necessary in order to clarify any perceived conflict between 1998 Ky. Acts ch. 496 and 42 USC 300gg, sec. 2742. 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 benefit public health by affording insurers an opportunity to reenter the Kentucky health insurance market. This will increase the availability of health insurance products to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, a detrimental effect on public health may result.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, the commissioner would have little information on which to base his decision whether to approve or disapprove an insurer's request to reenter the Kentucky health insurance market. Also, if this administrative regulation were not implemented, there might exist a conflict between the reentry provisions in 1998 Ky. Acts ch. 496 and those in 42 USC 300gg, sec. 2742.

(9) Identify any statute, administrative regulation or government policy that may be in conflict, overlapping, or duplication: Absent this administrative regulation, there is a potential conflict between the federal and the state reentry provisions.

(a) Necessity of proposed regulation if in conflict: This administrative regulation clarifies that all insurers must meet the provisions contained in 42 USC 300gg, sec. 2742 in addition to the reentry provisions contained in 1998 Ky. Acts ch. 496.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This administrative regulation eliminates the potential conflicting provisions contained in 42 USC 300gg, sec. 2742 and 1998 Ky. Acts ch. 496.

(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, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(New Administrative Regulation)

900 KAR 2:031. Repeal of 900 KAR 2:030.

RELATES TO: KRS 216.550

STATUTORY AUTHORITY: 1998 GA HB 679, sec. 9

NECESSITY, FUNCTION, AND CONFORMITY: 900 KAR 2:030 is no longer required because KRS 216.550, requiring the cabinet to establish a system for rating the quality of care provided by long-term care facilities, has been repealed.

Section 1. 900 KAR 2:030, Quality of care rating system for long-term care facilities, is hereby repealed.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October

15, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: 750 providers of long-term care.

(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: None

2. Second and subsequent years: Same

(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. No additional surveyors are anticipated because of this program.

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: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No 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 government policy which may be in conflict, overlapping, or duplication. No conflict.

- (a) Necessity of proposed regulation if in conflict;
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(New Administrative Regulation)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: HB 115 sec. 13

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.250, 1998 GA HB 115, HB 132

NECESSITY, FUNCTION, AND CONFORMITY: HB 115 of the 1998 General Assembly directs the Cabinet for Health Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth or dispensed to an address within the Commonwealth. The purpose of the system is to improve access to controlled substances for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's pharmaceutical history related to controlled substances. Also the system will enable regulatory or law enforcement agencies to address violations of KRS Chapter 218A. The purpose of this administrative regulation is to establish the criteria for reporting prescription data, for providing reports to authorized persons, and for a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Patient identifier" means:

- (a) Patient's full name;
- (b) Patient's address, including zip code;
- (c) Patient's date of birth; and
- (d) Patient's Social Security number or an alternative identification number.

(2) "Pharmacy Universal Claim Form" means a nationally recognized form used for billing drug claims to insurance plans. Forms may be obtained from pharmaceutical wholesalers or other business form suppliers.

(3) "Report" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.

(4) "Statistical report" means a compilation of data that does not include identification of a patient, a prescriber, or a dispenser.

Section 2. Data Reporting. (1) A dispenser shall report all controlled substances dispensed after December 31, 1998.

(2) A dispenser of a controlled substance listed in Schedule II, III, IV, or V shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of drug dispensed;
- (d) Date of dispensing;
- (e) Estimated days supply dispensed;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Serial number assigned by the dispenser; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(3)(a) The data shall be transmitted within sixteen (16) days of the date of dispensing unless the cabinet grants an extension.

(b) An extension may be granted to:

1. An individual dispenser upon written application stating the necessity for an extension and the period of time for which the extension is necessary; or

2. All dispensers, if the cabinet or its agent is unable to receive electronic reports.

(4) Except as provided in subsection (7) of this section, the data

shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Double sided, high density micro floppy disk; or

(c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape.

(5) The data shall be transmitted in the format described by the ASAP Telecommunications Format for Controlled Substances, May, 1995, published by the American Society for Automation in Pharmacy, 492 Norristown Road Suite 160, Blue Bell, PA 19422-2359.

(6) The cabinet shall provide a toll-free telephone number for transmitting electronic reports by modem.

(7)(a) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in ASAP format, may request a waiver from electronic reporting. The request shall be made to the cabinet in writing.

(b) A dispenser who receives a waiver shall report the data by submitting a completed Pharmacy Universal Claim Form.

Section 3. Compliance. (1) For purposes of enforcing the requirements of Section 13(8) of HB 115 of the 1998 GA, a dispenser shall be deemed to be the person who is registered with the U.S. Drug Enforcement Administration.

(2) A dispenser may presume that the patient identification information provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written request shall be filed with the cabinet prior to the release of a report.

(2) A request for a report shall be made on Form DCB-15.

(3) Reports, other than statistical reports, shall be provided only to persons authorized by Section 13(6) of HB 115 of the 1998 GA.

(4) The cabinet may provide reports, on its own initiative, to regulatory agencies or law enforcement agencies authorized by Section 13(6) of HB 115 of the 1998 GA.

(5) A statistical report may be provided to officials of state government upon written request.

(6) The cabinet may use a statistical report for educational purposes.

(7) The cabinet shall evaluate a report prior to release. At its discretion, the cabinet may provide a summary in lieu of the report.

Section 5. Alternative Patient Identification Number. (1) If the patient has no Social Security number or refuses to provide a Social Security number, the patient's driver's license number shall be used.

(2) If the patient has no Social Security number and has no driver's license number, the number 000-00-0000 shall be used.

(3) If the patient is a child who has no Social Security number, the parent's or guardian's Social Security number or alternative patient identification number shall be used.

(4) If the patient is an animal, the owner's Social Security number or alternative patient identification number shall be used.

(5) If the patient's Social Security number is not available, the Social Security number or alternative patient identification number of the person obtaining the controlled substance on behalf of the patient shall be used.

(6) If the patient or the patient's agent refuses to provide a Social Security number or driver's license, the number 999-99-9999 shall be used.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ASAP Telecommunications Format for Controlled Substances, dated May, 1995;

(b) A Pharmacy Universal Claim form; and

(c) DCB-15, 9/98 edition.

(2) This material may be inspected, copied, or obtained at the Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held October 22, 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 October 15, 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 plus an indeterminate number of practitioners and law enforcement officers 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: Pharmacies and practitioners who dispense controlled substances will be required to report specific data about the controlled substances that are dispensed to patients. Electronic reporting is required unless a pharmacy or practitioner cannot comply; for those persons paper reporting is available. Batch reports are required twice a month. Many reports will be generated automatically by the dispenser's computer or by the pharmacy chain's headquarters. Excluding paper reports, the other reports will require 2 to 8 minutes of the dispenser's time per reporting period. Cost of reporting will be minimal due to the use of electronic formats and toll-free phone numbers. Competition will not be affected because all dispensers are required to report.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department for Public Health is required to collect the data, develop a program for utilizing the data received, purchase equipment for generating reports, store the data received, and maintain the data in a secure environment. The department must also provide reports from the data to practitioners, pharmacists, licensing boards, and law enforcement agencies that are authorized by statute to receive it. The department and all agencies that utilize the reports will realize significant savings in investigative costs.

2. Continuing costs or savings: Costs for data collection, data storage and data maintenance will recur annually.

3. Additional factors increasing or decreasing costs: Additional staff will be required. However, efficiency of all staff will dramatically increase.

(b) Reporting and paperwork requirements: The department is required to produce reports upon request of authorized persons and agencies.

(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 this program 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 cost more in time or money than the new system. Also alternatives conflict with the department's effort to provide appropriate drug therapy for patients with legitimate medical conditions that require treatment with prescription controlled substances.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Practitioners or pharmacists who treat patients with legitimate medical conditions in need of treatment with prescription controlled substances will be able to ascertain that the patients are not violating KRS Chapter 218A.

(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: Kentucky will continue to utilize inordinate quantities of prescription controlled substances (as compared with other states) and patients who have legitimate medical needs will continue to experience difficulty in obtaining these drugs.

(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 and dispensing practitioners who supply controlled substances to citizens of the Commonwealth.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

904 KAR 2:018. Transportation services for Kentucky Works.

RELATES TO: KRS 205.200(2), 205.211, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 205.200(2), 42 USC 601 et seq., 96A.095, 281.600, 49 USC Ch. 53, 1998 Ky. Acts ch. 100, ch. 426, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive K-TAP money grants be prescribed by administrative regulations in conformity with 42 USC 602 et seq. and federal regulations. This administrative regulation sets forth the requirements for receiving Kentucky Works transportation services.

Section 1. Definitions. (1) "Approved Kentucky Works activities" means participation in an allowable activity pursuant to 904 KAR 2:370, Section 2(2)(c).

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

(3) "Component" means services and activities pursuant to 904 KAR 2:370, Section 2(2)(c).

(4) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 904 KAR 2:370, and referrals for removal of concerns takes place.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR

2:006, Section 1;

(6) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance;

(7) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(8) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(9) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance.

Section 2. Transportation Services in Kentucky Works Components. Transportation services shall be provided in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation while the K-TAP case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 3. Transportation Authorization. (1) If free transportation is unavailable which meets the needs of the recipient, transportation shall be provided for individuals participating in approved Kentucky Works activities:

(a) Pursuant to 904 KAR 2:017; or

(b) Initially in limited areas until statewide implementation is completed pursuant to Section 2 of this administrative regulation and 603 KAR 7:080.

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

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

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

Section 4. Restrictions on Authorization of Transportation Services. Transportation services shall not be provided if the participant is penalized or sanctioned for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 5. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Attorney

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 27, 1998

FILED WITH LRC: September 3, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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 pro-

posed 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, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive transportation services for Kentucky Works under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). The funding to implement work requirements and supportive services provisions for participation in an approved Kentucky Works activity, for TANF block grant program, is now included in Title IV-A. In Kentucky the TANF block grant program to implement the work requirements and provide supportive services is called Kentucky Works. As of May 1998, there were a total of 51,579 K-TAP cases with 50,490 basic K-TAP cases and 1,089 Unemployed Parent cases. In May 1998, there were approximately 37,807 adults in those cases. Supportive services are provided to enable participation by K-TAP recipients who are in an approved Kentucky Works activity.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: Individuals who are applicants or recipients of K-TAP, who are required to participate in Kentucky Works provisions will not have any additional compliance, reporting or paperwork requirements due to complying with the requirements for receiving transportation services than what is currently required.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency: Transportation payments will change based on a monthly payment rate basis instead of a rate based on the number of days that the recipient is expected to participate in a Kentucky Works activity. The counties where the Human Services Transportation Delivery process has been implemented will result in capitated per recipient per month rate. There is no other cost impact other than system changes and a change to the referral process, which cannot be determined at this time.

1. First year: Amount budgeted for SFY 1998 \$6,228,400.

2. Continuing cost or savings: Amount budgeted for SFY 1999 \$12,690,000. Amount budgeted for SFY 2000 \$12,690,000.

3. Additional factors increasing or decreasing cost: The implementation of the Human Services Transportation Delivery process is expected to contain or decrease the costs associated with the delivery of transportation supportive services. The mandatory increases in annual Kentucky Works participation rates and the subsequent increase in the needed transportation supportive services will be offset by an administrative contract with the Transportation Cabinet in which the regional broker/provider will be responsible for all covered Kentucky Works transportation needs based on the payment of a per member per month capitated rate.

(b) Reporting and paperwork requirements: Compliance with existing reporting requirements will be enhanced. The tracking of encounter data with the delivery of transportation services will give a more concise report of cost of utilization of Kentucky Works trans-

portation supportive services. Paperwork will decrease as a result of implementation of the Kentucky Human Services Transportation Delivery Process. Paperwork functions currently required by the supportive service payment process will be eliminated. Paperwork responsibilities will be shifted to the regional broker/provider with no cost to the department.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent published and no written comments were received.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Assessment of alternative methods resulted in a multi-cabinet initiative to provide coordinated human service transportation delivery through a program administration contract with the Transportation Cabinet.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated work requirements found in 42 USC 601 et seq.

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

(c) If detrimental effect would result, explain detrimental effect: In order for K-TAP recipients who are required to participate in the Kentucky Works Program to obtain the necessary skills to become economically self-sufficient before the five year time limit expires, availability of necessary transportation must exist. The current process does not insure availability of needed transportation.

(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: This administrative regulation will allow eligible Kentucky Transitional Assistance Program (K-TAP) recipients to be referred to a regional capitated transportation network. The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This network should offer savings to the Cabinet while retaining stability in providing transportation to those in need. In those areas where the regional capitated transportation network exists, the broker/provider will provide the transportation on a capitated basis instead of direct payments to recipients.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

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

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

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

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

RELATES TO: 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 205.200(2), 42 USC 601 et seq., 1998 Ky. Acts ch. 426, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program (K-TAP) money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program in accordance with 20 CFR Part 645.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Characteristics associated with long-term welfare dependence" means the following traits as defined in this section:

(a) School dropout;

(b) Teen pregnancy;

(c) Poor work history; or

(d) Requires substance abuse treatment for employment.

(3) "Community service" means a work assignment with a public or private nonprofit agency, which provides a public service, and assists a participant to move promptly into regular public or private employment.

(4) "Has not completed secondary school" means an individual who has not graduated from high school or obtained a certificate of general equivalency, and has skills in reading or mathematics at the 8.9 grade level or below.

(5) "Job creation through wage subsidies" means the establishment of new jobs through the expansion of an existing industry, the introduction of a new industry, or the establishment of self-employment opportunities in a community, in which the wages of the participant who is placed in a newly created job are subsidized for a specific period of time.

(6) "Job placement" means placement of an individual into unsubsidized employment or into transitional employment opportunities which lead to lasting unsubsidized employment and self-sufficiency.

(7) "Job readiness" means preemployment preparation that familiarizes individuals with general work place expectations and appropriate work behavior. Preparation includes:

(a) Self-assessment;

(b) Motivation;

(c) Communication;

(d) Attitudes;

(e) Conflict resolution;

(f) Interviewing techniques;

(g) Completion of employment application or resume;

(h) Personal hygiene; and

(i) Life skills.

(8) "Job retention" means services to assist individuals in retaining newly obtained employment. Job retention services may include:

(a) Secondary support providers;

(b) Life skills;

(c) Parenting services;

(d) Substance abuse treatment;

(e) Support groups;

(f) Assistance in locating and arranging:

1. Child care; and

2. Transportation services; and

(g) Advocacy and mediation in client and employer conflicts.

(9) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1;

(10) "Labor market deficiencies" means the following traits as defined in this section:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment; or
- (c) Poor work history.

(11) "Long-term recipient" means a recipient of K-TAP, or its predecessor Aid to Families with Dependent Children, for thirty (30) or more months or whose K-TAP benefits will terminate within twelve (12) months due to the twenty-four (24) month or sixty (60) month limit on receipt pursuant to 904 KAR 2:006, Section 19.

(12) "Medical substance abuse treatment" means hospital-based substance abuse treatments and methadone maintenance.

(13) "Noncustodial parent" means the mother or father of a dependent child not residing in the home with the child. In order to participate:

(a) The custodial parent or the minor child shall be a long-term recipient whose noncustodial parent has two (2) of three (3) labor market deficiencies; or

(b) The noncustodial parent personally possesses at least one (1) characteristic associated with long-term welfare dependence.

(14) "Nonmedical substance abuse treatment" means all treatments other than hospital based substance abuse treatments and methadone maintenance.

(15) "On-the-job training" means a participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(16) "Other services" means services deemed necessary by the case manager and not available from any other source in order for the Welfare to Work Grant Program participant:

- (a) To participate in a work activity; or
- (b) To obtain or retain employment.

(17) "Poor work history" means the individual has worked full time (thirty (30) hours or more per week) no more than three (3) consecutive months in the past twelve (12) calendar months.

(18) "Postemployment services" means services provided after a Welfare to Work Grant Program participant is placed in an employment activity or any other subsidized or unsubsidized job that include:

- (a) Basic educational training;
- (b) Occupational training;
- (c) English as a second language;
- (d) Referral to vocational rehabilitation; and
- (e) Mentoring.

(19) "Private Industry Council (PIC)" means a council established under 29 USC 1512.

(20) "Regular employee" means an unsubsidized employee of an employer who employs a Welfare to Work Grant Program participant.

(21) "Requires substance abuse treatment for employment" means a person for whom a community mental health center professional has performed a formal substance abuse assessment and recommended a treatment plan.

(22) "School dropout" means a person who is at least seventeen (17) years of age, has not achieved high school graduation or equivalency, and is not enrolled or has quit attending high school or equivalent training (other than a regular holiday or school break period).

(23) "Supportive services" means services that enable an individual to participate in a job readiness activity, an employment activity or to obtain and retain employment. Services include:

- (a) Child care;
- (b) Transportation;
- (c) Substance abuse treatment;
- (d) Emergency or short-term housing assistance;
- (e) Supplies or uniforms;
- (f) Items needed to participate in work activities; and
- (g) Referrals to other agencies for provision of services that include:

- 1. Life skills;
- 2. Parenting;
- 3. Family counseling; and
- 4. Family stability.

(24) "Teen pregnancy" means a person less than age twenty

(20) who is currently pregnant or a person of any age who gave birth prior to age twenty (20).

(25) "Welfare to work" means a program which assists long-term welfare recipients with labor market deficiencies, welfare recipients who have characteristics associated with long-term welfare dependence, or noncustodial parents of welfare recipient children who are hard to employ become self-sufficient.

(26) "Work experience" means a work assignment with a public or private employing entity for a participant who needs assistance in becoming accustomed to basic work requirements and is designed to promote the development of good work habits and basic work skills for those who have never worked or who have been out of the labor force for an extended period of time.

Section 2. Program Participation. The Welfare to Work Grant Program shall target:

(1) A long-term welfare recipient with at least two (2) of three (3) labor market deficiencies which include:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment, or
- (c) Has a poor work history;

(2) A welfare recipient who has characteristics associated with long-term welfare dependence as defined in Section 1(2) of this administrative regulation.

(3) A noncustodial parent as defined in Section 1(13) of this administrative regulation. For a child born out-of-wedlock, the following is required in order for the noncustodial father to receive Welfare to Work Grant Program services:

- (a) Legal paternity; or
- (b) Administrative establishment of paternity pursuant to 904 KAR 2:006, Section 11.

Section 3. Allowable Activities. (1) Welfare to Work Grant Program funds may be used for the following activities:

(a) Job readiness activities with public or private providers.

(b) Employment activities which consist of any of the following:

- 1. Community service;
- 2. Work experience;
- 3. Job creation through wage subsidies; and
- 4. On-the-job training.

(c) Job placement services with public or private providers.

(d) Postemployment services which are provided after an individual is placed in one (1) of the employment activities listed in paragraph (b) of this subsection, or in any other subsidized or unsubsidized job. Postemployment services shall include:

- 1. Basic educational skills training;
- 2. Occupational skills training;
- 3. English as a second language training; and
- 4. Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, in one (1) of the employment activities, or in any other subsidized or unsubsidized job. These services may be provided with Welfare to Work Grant Program funds only if they are not otherwise available to the participant. Job retention and support services include:

- 1. Transportation assistance;
- 2. Substance abuse treatment (except Welfare to Work Grant Program funds may not be used to provide medical treatment);
- 3. Child care assistance;
- 4. Emergency or short-term housing assistance; and
- 5. Other supportive services necessary to assure success in employment.

(f) Individual development accounts which are established in accordance with 42 USC 604(h).

(2) The following may be incorporated in the design of any of the allowable activities listed in subsection (1) of this section:

- (a) Intake;
- (b) Assessment;
- (c) Eligibility determination;
- (d) Development of an individualized service strategy; and
- (e) Case management.

(3) The following are designed to meet the K-TAP participation requirements in accordance with 904 KAR 2:370:

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- (a) Welfare to Work Grant Program job readiness;
- (b) Job placement; and
- (c) Employment activities.

Section 4. Duration of Service. A participant in the Welfare to Work Grant Program shall remain eligible for Welfare to Work services until the conclusion of the service period if the participant becomes ineligible for K-TAP benefits during participation, provided that participation requirements are met pursuant to Section 3(3) of this administrative regulation.

Section 5. Safeguards. (1) A participant in the Welfare to Work Grant Program:

- (a) Shall not be discriminated against because of:

- 1. Race;
- 2. Color;
- 3. Religion;
- 4. National origin;
- 5. Age;
- 6. Disability;
- 7. Political belief or affiliation; or
- 8. Gender

(b) Shall be subject to the same gender, health and safety standards established under state and federal law which are applicable to a regular employee;

- (c) May fill an established position vacancy unless:

1. An individual is on layoff from the same or any substantially equivalent job within the same organizational unit;

2. The employer has terminated the employment of a regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy created with the Welfare to Work Grant Program participant; or

3. The employer has caused an involuntary reduction to less than full time in hours, wages or employment benefits of a regular employee in the same or substantially equivalent job within the same organizational unit; or

(d) Shall not infringe upon the promotional opportunities of a regular employee in an employment activity.

(2) An employment activity operated with Welfare to Work Grant funds shall not violate existing contracts for services or collective bargaining agreements unless the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken.

Section 6. Resolution of Grievances. (1) A resolution of grievances shall be conducted:

(a) At the request of the Welfare to Work Grant Program participant; or

(b) At the request of a regular employee.

(2) The resolution of grievances shall be conducted by the cabinet, or its agent, and the employer with a Welfare to Work Grant Program participant in an employment activity.

(3) If no informal resolution can be reached within seven (7) days, the dissatisfied party may:

(a) Ask questions about or direct or mail complaints alleging a violation of Section 5(1)(a)1. through 7 of this administrative regulation to the Director, Civil Rights Center, United States Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210; or

(b) Request an administrative hearing on complaints involving gender discrimination, violation of health and safety standards, or displacement of a regular employee pursuant to Section 7 of this administrative regulation.

Section 7. Hearing Rights. (1) A Welfare to Work Grant Program participant shall have the same hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

(2) A regular employee who alleges a violation of a safeguard pursuant to Section 5 of this administrative regulation may file a complaint and may be afforded a hearing in accordance with KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material

is incorporated by reference:

(a) "WW-1, Welfare to Work (WtW) Information Exchange/Certification", edition 09/98, Cabinet for Families and Children;

(b) "WW-1.1, Consent for Release of Substance Abuse Information to Private Industry Councils (PIC)", edition 09/98, Cabinet for Families and Children;

(c) "WW-2A, WtW Participant Rights and Responsibilities for K-TAP Recipients", edition 09/98, Cabinet for Families and Children;

(d) "WW-2B, WtW Participant Rights and Responsibilities for the Noncustodial Parent", edition 09/98, 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.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 31, 1998

FILED WITH LRC: September 9, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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, 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: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are families who receive assistance under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), certain noncustodial parents of minors whose custodial parents are welfare recipients and former K-TAP recipients. The funding to implement the Welfare to Work Grant Program is included in Title IV-A. As of May 1998, there were a total of 50,490 basic K-TAP cases with approximately 35,657 adults in those cases, and 1,089 unemployed parent cases with 2,150 adults in those cases.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: Compliance, reporting and paperwork requirements should not affect K-TAP recipients required to participate in Kentucky Works. Compliance, reporting and paperwork requirements for non-K-TAP recipients should be minimal.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

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

1. First year: New federal funds \$17,722,913 for FFY 1998.

Funds must be expended between 4/23/98 and 4/22/2001. A state match of \$8,861,457 is required and available from General Funds carry forward authorized by the 1998 General Assembly. The cost generates a two-to-one ratio of new federal funds.

2. Continuing cost or savings: Same

3. Additional factors increasing or decreasing cost: None

(b) Reporting and paperwork requirements: Quarterly financial reports to the United States Department of Labor; Quarterly participant reports to United States Department of Health and Human Services.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the requirements for the program funded under 42 USC 601 et. seq.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The anticipated effect is that hard-to-employ present and former welfare recipients living in high poverty areas will obtain the skills necessary to obtain unsubsidized employment and to become economically self-sufficient.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the mandated provisions of 42 USC 601 et seq. would result in loss of federal funds.

(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: This administrative regulation will provide transitional assistance to hard-to-employ present and former welfare recipients living in high poverty areas and help them move into unsubsidized employment and become economically self-sufficient.

(11) TIERING: Is tiering applied? Yes. Federal regulations require that 70 percent of federal grant funds be spent on long-term recipients; up to 30 percent may be spent on those with characteristics associated with long-term welfare dependence.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

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

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 8, 1998

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 8, 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 August 4, 1998 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Nick Kafoglis; Dick Roeding; Joey Pendelton; Representatives James Bruce, Jimmy Lee, and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia; Doug Terry, DeeAnn Wenk, Biff Baker, Dan Risch.

Guests: Londa L. Wolanin, Linda Renschler, Jo Carole Ellis, Richard Casey, KHEAA; Hanson Williams, Personnel Board; Andy Crocker, Angela Robinson, Finance and Administration Cabinet; Mark Brenngelman, Gary Munsie, Board of Dentistry; Dave Nicholas, Division of Occupations and Professions; Camille Bathurst, Michael Denney, Bob Little, Kentucky Lottery Corporation; Roy Grimes, John Wilson, Pete Pfeiffer, Tom Bennett, Department of Fish and Wildlife Resources; Mark Farrow, Edward S. Ford III, Department of Agriculture; Bruce Williams, Natural Resources and Environmental Protection Cabinet; Tamela Biggs, Brenda Priestley, Barbara W. Jones, Justice Cabinet; Michael W. Coffey, Jesse Zimmerman, Stephen A. Williams, Charlie Harman, Transportation Cabinet; Patricia Hartanowicz, Rita Osborne, Education Professional Standards Board; George Parsons, Dave Matheis, Department of Vocational Rehabilitation; Jeanne Pherson, Sue G. Simon, Department for the Blind; Sharron S. Burton, Department of Insurance; Rena Stevels, Bernard J. Hettel, Kentucky Racing Commission; Eric Friedlander, Trish Howard, Cookie Whitehouse, Diane S. Chism, Vera Frazer, Pamela J. Aldridge, Jesse Williams, Betty Weaver, Karen Doyle, Thelma Cornett, Cindy C. Stoops, Cabinets for Health Services and Families and Children; Carol Omay, Kentucky Hospital Association; Carl Breeding, AIK; Jerry Deaton, Kentucky League of Cities; Mike Helton, KPMA-OTNERS; M. Winsper, Barbara Winsper, John Cooper, KMA; Jay Huber, KMA/KBA; Laurie Berry, Kentucky Association of Chiropractors; Daniel B. Howard, Kentucky Association of Regional MH-MR Programs; John Brazel, Kentucky Chamber of Commerce; Mike Porter, Kentucky Dental Association; Tom Marshall.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Londa Wolanin, chief operating officer, and Richard Casey, General Counsel, represented the Authority.

Mr. Casey stated that this administrative regulation: (1) governed administrative wage garnishments pertaining to the federal student loan program administered by KHEAA; and (2) was promulgated pursuant to federal law.

In response to questions by Senator Roeding, Mr. Casey stated that: (1) while it was estimated that 11,000 borrowers would default in fiscal year 1999, that number represented a small percentage of the portfolio administered by the Authority; (2) the Authority was not authorized to implement a more stringent collection procedure; (3) the Authority had sued over 12,000 individuals on their student loans since 1983; and (4) as of July 1, 1997, the federal Department of Education: (a) prohibited all similar agencies across the country from litigating; and (b) authorized the agencies to: 1. use administrative wage garnishment, which took ten percent of an individual's disposable earnings; 2. offset federal and state tax refunds and payments; and 3. use traditional letter and telephone methods of collection.

In response to questions by Senator Roeding, Ms. Wolanin stated that: (1) while she did not know the specific number of portfolios administered by the Authority, there were approximately 32,000

borrowers of defaulted student loans that: (a) had accrued over a number of years; (b) were currently in default status; (c) included both Kentucky residents and non-residents; and (d) represented the number of guaranteed loans for which the Authority had paid default claims; (2) the net default amount: (a) was calculated by subtracting the default dollars from the defaults; and (b) collected by the Authority equaled approximately six percent, which included individuals: 1. who were making payments on their defaults; and 2. who were without the resources needed to justify a garnishment; (3) the loan program was governed by federal Department of Education regulations; (4) the loan process was as follows: (a) the money was: 1. paid by a private lender; and 2. guaranteed by the Authority; and (b) when there was a default, the Authority: 1. paid the default claim; and 2. filed with the United States Department of Education for reimbursement; and (5) the Authority received approximately 98 % reimbursement on the defaults it paid out.

In response to a question by Chairman Arnold, Ms. Wolanin stated that she: (1) did not have the dollar figure of the amount of money owed the Authority with her; and (2) would provide this information to the Subcommittee after she returned to her office.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Kentucky Higher Education Assistance Authority

11 KAR 4:050. Setoff of authority claims. Mr. Casey stated that this administrative regulation established appeal procedures for cases in which the Authority attempted to set-off federal or state income tax or other payments for recovery on loans.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

11 KAR 4:070. Reports by postsecondary institutions. Mr. Casey stated that: (1) Senate Bill 202, enacted by the General Assembly during its 1998 Regular Session, required institutions of post-secondary education to: (a) spend at least as much of their own institutional funds to award student aid for Kentucky residents as for non-residents; or (b) report how they spent their money to the Authority; and (2) this new administrative regulation implemented the reporting and certification requirements mandated by Senate Bill 202.

This administrative regulation was amended as follows: Section 4 was amended to comply with the drafting requirements of KRS 13A.222(4).

Division of Student Services: KHEAA Grant Programs

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5. Mr. Casey stated that this administrative regulation: (1) related to the Authority's grant programs, especially the Kentucky tuition grant program; and (2) was amended in response to House Bill 307, enacted by the General Assembly during its 1998 Regular Session, that: (a) removed the term "non-profit" from eligible institutions; and (b) applied to a degree-granting, private, for-profit or non-profit institution.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) Section 1 was amended to: (a) correct citations; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

Kentucky Educational Savings Plan Trust

11 KAR 12:010. Kentucky Educational Savings Plan Trust definitions. Mr. Casey stated that the four Title 11, Chapter 12 administrative regulations were amended to conform Kentucky's educational

savings plan trust program to recently-enacted federal tax provisions that granted federal tax advantages to individuals who saved in the program.

In response to questions by Senator Roeding, Ms. Wolanin stated that: (1) she agreed with Senator Roeding regarding the importance of the Educational Savings Plan Trust Program; (2) the Authority: (a) marketed the Program by several methods, including: 1. publications the Authority sent predominantly to families at the higher level; 2. letters sent to families with new births that had been obtained from statistics received at the time a baby was born; 3. articles in statewide publications; 4. keeping financial aid personnel and counselors advised of the program; 5. participation at conferences; and 6. a booth at the Kentucky State Fair; and (b) planned to further extend its marketing of the Program; (3) the Program provided a very good opportunity for families to save because: (a) federal tax amendments provided that the tax earnings on investments would be: 1. deferred until the benefits were paid to the student; and b. taxed at the student rate; and (b) state tax law exempted the earnings from Kentucky tax; (4) the Authority hoped that the number of loans would be reduced because of increased savings; and (5) the minimum monthly contribution was \$25.

This administrative regulation was amended as follows: (1) the TITLE was amended to comply with the requirements of KRS 13A.222(4)(e); (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

11 KAR 12:060. Cancellation and payment of refund. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Osteopath Scholarship Program

11 KAR 14:010. Osteopathic Medicine Scholarship Program application process. Mr. Casey stated that the eight Title 11, Chapter 14 administrative regulations implemented the Osteopathic Medicine Scholarship Program, established by Senate Bill 202, enacted by the General Assembly during its 1998 Regular Session.

In response to questions by Senator Roeding, Ms. Wolanin stated that: (1) the Osteopathic Medicine Scholarship Program provided another great opportunity for Kentucky students; and (2) the Authority: (a) included information about the Osteopathic Medicine Scholarship Program and the Commonwealth Merit Scholarship Program in its "Getting In" handbook, which was distributed to approximately 80,000 high school seniors in Kentucky; (b) made mass mailings to the homes of students in grades eight through twelve; (c) tried very hard to publicize its programs; and (d) would continue to be sensitive to the need for more information.

In response to questions by Senator Kafoglis, Mr. Casey stated

that: (1) the Osteopathic Medicine Scholarship Program awarded repayable scholarships to recipients; (2) if a recipient pursued and practiced in one of three specified fields within osteopathic medicine, the award would be a scholarship without a repayment obligation; and (3) if a recipient did not pursue or practice in one of those three specified fields within osteopathic medicine, the recipient would be obligated to repay the award amount.

Ms. Wolanin stated that recipients were required to have Kentucky service on a year for year basis similar to the requirements for the teacher scholarship program.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 14:020. Osteopathic Medicine Scholarship Program award determination. In response to questions by Senator Roeding, Mr. Casey stated that: (1) Senate Bill 202, enacted by the General Assembly during its 1998 Regular Session: (a) required the scholarship amount to be the difference in tuition between what was charged by the Pikeville Osteopathic Medicine School and what was charged at the University of Louisville and University of Kentucky's medical schools; (b) did not specify a variable amount; and (c) required the Authority to promulgate administrative regulations that included a process if funds were insufficient; and (2) the Authority: (a) decided that if funds were insufficient, the funds would be targeted to students who were closest to graduation; and (b) had not determined the ranking procedure that would be used if there was an insufficiency of funds for a particular class.

This administrative regulation was amended as follows: the TITLE and the NECESSITY, FUNCTION, AND CONFORMITY paragraph were amended to comply with the drafting requirements of KRS 13A.222(4).

11 KAR 14:030. Osteopathic Medicine Scholarship Program disbursement process. This administrative regulation was amended as follows: the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 14:040. Osteopathic Medicine Scholarship Program overawards and refunds. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 14:050. Osteopathic Medicine Scholarship Program records and regulations. This administrative regulation was amended as follows: the TITLE, the RELATES TO, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to comply with the drafting requirements of KRS 13A.222(4).

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 14:070. Osteopathic Medicine Scholarship Program notifications. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 4 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Commonwealth Merit Scholarship Program

11 KAR 15:010. Definitions. Mr. Casey stated that the Title 11, Chapter 15 administrative regulations implemented the Commonwealth Merit Scholarship program, that: (1) was established by Senate Bill 21, enacted by the General Assembly during its 1998 Regu-

lar Session; and (2) had been renamed at the executive level as "the Kentucky Educational Excellence Scholarship Program".

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 15:020. Student eligibility report. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

11 KAR 15:030. Dual enrollment under consortium agreement. In response to questions by Senator Roeding, Mr. Casey stated that: (1) consortium agreements: (a) were common in financial aid terms across the country under the federal student aid programs; and (b) enabled a student who chose to attend two different schools half-time to have his financial aid eligibility considered as though he were a full-time student; (2) while the Authority was required to hold one school responsible for meeting the reporting requirements, the institutions were authorized to enter into agreements between themselves to decide which institution would be the responsible institution for providing the required reports and keeping the required records.

In response to questions by Senator Roeding, Ms. Wolanin stated that: (1) as a practical matter, if a student attended part-time at two different institutions that student might not be eligible for financial aid because it would appear that the student was a part-time, rather than a full-time, student; and (2) this administrative regulation established a method for bringing the information from the two institutions together to be singularly reported.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 15:040. Commonwealth merit scholarship award determination procedure. In response to a question by Senator Roeding, Mr. Casey stated that 1998 Senate Bill 21 required coverage of part-time students.

In response to questions by Senator Roeding, Ms. Wolanin stated that: (1) if a student was less than full-time, Senate Bill 21, enacted by the General Assembly during its 1998 Regular Session, directed the Authority to prorate the amount of the award; and (2) while six hours was considered part-time, twelve hours was considered full-time.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 15:050. Disbursement. In response to questions by Senator Roeding, Mr. Wolanin stated that an eligibility verification file was required to: (a) check to see if the students had enrolled in school; (b) measure a student's cumulative grade point average to ensure that the student had at least a 2.5 or 3.0; and (3) measure a student's continued eligibility.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 15:060. Commonwealth merit scholarship overaward and refund and repayment procedure. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

11 KAR 15:070. Records and reports. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Dentistry

201 KAR 8:440. Fee schedule. Gary Munsie, Executive Director of the Board of Dentistry; Mike Porter, Executive Director of the Kentucky Dental Association; and Mark Brengelman, Assistant At-

torney General, represented the Board.

In response to questions by Representative Bruce, Mr. Munsie stated that the Board had increased the registration fee for a: (1) dentist, by fifteen dollars; and (2) dental hygienist, by five dollars.

In response to a question by Chairman Arnold, Mr. Munsie stated that: (1) Senate Bill 228, enacted during the 1998 Regular Session of the Kentucky General Assembly, authorized the Board to create a Well-Being Committee; (2) the General Assembly stated that fees would need to be increased to fund the Committee; and (3) the monies that were raised through this fee increase would fund the Committee.

In response to questions by Representative Allen, Mr. Munsie stated that: (1) the fee increases would: (a) not go to the Board members; (b) go to the Well-Being Committee, which had been established through the Kentucky Dental Association; (c) provide a funding mechanism for rehabilitative services for impaired dentists or dental hygienists; and (d) amount to about \$48,000 per year; (2) the Committee: (a) was a separate entity from the Board of Dentistry; and (b) would be funded by the \$48,000; (3) the Board would collect, but not use, the money; (4) because at least ten percent of dentists and dental hygienists might have a drug or alcohol impairment, some dentists and dental hygienists needed help with a drug, alcohol, or mental impairment; (5) the Committee had been established to help dentists and dental hygienists through their problem; and (6) the program was similar to that established by the Medical Licensure Board.

In response to questions by Representative Allen, Mr. Porter stated that: (1) the Kentucky Dental Association and Kentucky Dental Hygienists Association: (a) supported Senate Bill 228, enacted during the 1998 Regular Session of the Kentucky General Assembly; (b) believed the program would help their colleagues; and (c) advised the General Assembly that, unfortunately, approximately ten percent of the licensed dentists and dental hygienists nationwide had some type of impairment that affected their ability to practice dentistry; (2) it had always been a consideration in medicine and dentistry that such individuals suffered from a disease; (3) alcoholism was a recognized medical disease; (4) the profession believed that impaired individuals had a value to society; (5) it would be good for impaired individuals and society if they could be motivated to enter a treatment process; and (6) if a colleague had a problem, the Board and Kentucky Dental Association wanted the colleague: (a) in treatment; and (b) to return to the profession: 1. sober; 2. safe; and 3. clean.

In response to a question by Representative Allen, Mr. Munsie stated that: (1) frequently, the Board did not know if a dentist had a drug or alcohol problem; (2) if a problem was discovered through the Board's complaint procedure: (a) it would possibly go through a hearing process; and (b) the Board would take action; (3) the Board hoped that a dentist with a problem would: (a) report himself to the Well-Being Committee; and (b) seek help; (4) the Board advertised the Well-Being Committee; and (5) the Well-Being Committee reported to the Board that there had been dentists who: (a) responded to the program; and (b) sought help.

In response to a question by Senator Kafoglis, Mr. Porter stated that: (1) with this program, a person with a drug or alcohol problem was more likely to seek help; (2) many times, an individual had reached such a low point in his life, because of the disease, that he: (a) no longer practiced dentistry; or (b) practiced very little; and (3) the Well-Being Committee had found that spouses and loved ones were a great referral source.

In response to questions by Chairman Arnold, Mr. Munsie stated that: (1) the Board: (a) would alert dentists and dental hygienists of this program through the renewal process this year; (b) had estimated the cost to be \$48,000 per year for the program; and (c) would fund the program through the Kentucky Dental Association to the Well-Being Committee; (2) the Well-Being Committee was made up of about 18 people throughout the state; and (3) Dr. John Green, a dentist in the Louisville area, was: (a) the chair of the Committee; and (b) responsible for the utilization of the money, whether it went to: 1. part-time payment to him to administer the program; or 2. direct programs for the impaired dentists.

In response to a question by Chairman Arnold, Mr. Porter stated that: (1) there was: (a) not a dues increase to the licensed dentist in

the state; and (b) a license fee increase; (2) Senate Bill 228, enacted during the 1998 Regular Session of the Kentucky General Assembly, was: (a) unanimously supported by the Kentucky Dental Association House of Delegates; and (b) widely reported to the Kentucky Dental Association membership with a request for their support.

In response to a question by Chairman Arnold, Mr. Munsie stated that he: (1) did not know what percentage of the license fee increase would go toward payment of Committee executives; and (2) would provide the Subcommittee with the percentage.

In response to a question by Senator Pendleton, Mr. Munsie stated that: (1) dentists had been offered this program throughout the years through the Kentucky Dental Association; (2) because the program was now a joint program between the Board of Dentistry and Kentucky Dental Association, the Board would now advertise the program more; (3) when renewal notices were sent out this past year, the Board also sent out a newsletter about the Well-Being Program; (4) he wrote the article on the Well-Being Program that was in the newsletter; and (5) the Board did not receive public comment on the establishment of the Well-Being Program.

In response to questions by Representative Allen, Mr. Munsie stated that: (1) the public would not know that a dentist had a drug or alcohol problem, unless the dentist went through the hearing process with the Board; (2) the hearing process was a matter of public record; and (3) the Well-Being Committee would attempt to help the dentist, so that he would still be able to practice dentistry.

In response to a question by Representative Allen, Mr. Porter stated that: (1) the administrator of the Well-Being Committee would be paid approximately \$36,000; (2) this amount would: (a) not go to the administrator alone; (b) be used for: 1. office help; 2. a staff person to assist with phone calls and paperwork; and 3. travel expenses required to meet with the dentists and dental hygienists after the Committee received a report; (3) all of the money would be for administrative purposes; and (4) the Kentucky Dental Association: (a) believed that \$48,000 would be enough to fund the program; (b) helped fund the Well-Being Committee; and (c) had a companion program.

In response to a question by Representative Lee, Mr. Porter stated that: (1) the administrator: (a) would serve part-time; and (b) was a practicing dentist; and (2) the money that was being raised by the fee increase would: (a) be spent on administrative costs; and (b) not be spent for treatment.

In response to a question by Chairman Arnold, Mr. Munsie stated that the Board: (1) was not authorized by statute to temporarily suspend a dentist; and (2) could suspend a dentist after formally charging him with an offense.

This administrative regulation was amended as follows: (1) the TITLE was amended to accurately reflect the subject matter of this administrative regulation; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) Section 1(1) was amended to provide a biennial license fee, as required by KRS 313.080(3); (4) a new Section 2 was created to require biennial registration with the board; and (5) a new Section 3 was created to incorporate by reference necessary registration forms.

Board of Examiners of Psychologists

201 KAR 26:121. Scope of practice. Dave Nicholas, Director, Division of Occupations and Professions, and Mark Brengelman, Assistant Attorney General, represented the Board.

Mr. Nicholas stated that: (1) he was the Director of the Division of Occupations and Professions; and (2) the Division provided administrative services to seventeen licensure boards or commissions, including the Board of Examiners of Psychology.

This administrative regulation was amended as follows: (1) Sections 2 and 3 were amended to cross-reference the applicable administrative regulations; and (2) Sections 2 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 26:125. Health service provider designation. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 were amended to comply with the: (1) format requirements of KRS

13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity. This administrative regulation was amended as follows: Section 6 was amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Board of Certification for Professional Art Therapists

201 KAR 34:030. Continuing education requirements. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board.

In response to questions by Chairman Arnold, Mr. Nicholas stated that: (1) he: (a) was not: 1. an art therapist; or 2. a member of any of the professions governed by the seventeen boards he represented; and (b) understood that an art therapist was: 1. not a tattoo artist; and 2. trained to use art as a medium for therapy to: a. assist people who needed assistance; and b. diagnose situations, including sexual abuse of a child; and (2) art therapy: (a) was not a psychology situation; and (b) was a mental health field that used art as a medium for counseling.

Representative Bruce stated that: (1) representatives of the boards Mr. Nicholas represented should be required to attend Subcommittee meetings, in case members had questions that Mr. Nicholas could not answer; and (2) KRS Chapter 13A required the presence of agency personnel with authority to amend or defer.

Mr. Nicholas stated that if the Subcommittee desired, he would bring board representatives with him to the meetings.

In response to questions by Senator Roeding, Mr. Nicholas stated that: (1) an art therapist was required to have a master's degree in art therapy or its equivalent; (2) the requirement for 40 hours of continuing education matched the amount of hours required for national certification, which virtually all art therapists maintained; and (3) because national certification preceded state certification in Kentucky, the state had adopted the national requirements.

This administrative regulation was amended as follows: (1) Section 7 was amended to provide a certificate holder the right to a KRS Chapter 13B hearing if denied continuing education credits; (2) Section 8(1) was amended to provide the hardships for which a time extension for earning credits would be granted; (3) Sections 1, 5, 7, and 8 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1, 3, 5, 6, 7, 8, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 34:040. Code of ethics. This administrative regulation was amended as follows: (1) Section 1(2)(a) was amended to delete "sexual orientation" from discriminatory prohibitions; (2) Sections 4(1)(a) and 4(3) were amended to delete provisions that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f); (3) Sections 3, 5, 6, and 8 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 through 10 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Certification for Professional Counselors

201 KAR 36:020. Fees – renewal date. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board.

In response to questions by Senator Roeding, Mr. Nicholas stated that: (1) professional counselors were mental health professionals who were required to have: (a) a Master's or doctoral degree in counseling that: 1. included 60 graduate credit hours; and 2. was a very difficult certificate to obtain; and (b) prior to becoming certified: 1. completed education in nine specified areas; and 2. two years of supervised experience; and (2) the General Assembly had enacted legislation providing certification for professional counselors.

In response to questions by Representative Allen, Mr. Nicholas stated that: (1) this administrative regulation: (a) did not increase fees; and (b) established a new fee for renewals of \$150; (2) because there were between 185 and 190 professional counselors in Kentucky, it was estimated that the renewal fee would generate between \$26,000 and \$28,000 a year; (3) after the Board paid his administrative fee of approximately \$15,000, the Board would have enough money left over to meet its travel expenses; (4) an applica-

tion fee was already charged by the Board; and (5) the renewal fee had not been charged prior to the promulgation of this administrative regulation, because the: (a) legislation requiring certification of professional counselors was enacted in 1996; and (b) Board began certifying counselors in December 1996.

In response to a question by Representative Bruce, Mr. Nicholas stated that he: (1) believed he could represent his boards at the Subcommittee meetings because he was the executive director of the boards; (2) would bring a board representative with him to the next meeting; and (3) had not asked the board members to come in the past.

Subcommittee staff stated that: (1) the Subcommittee usually will accept an individual's statement that they had the authority to amend an administrative regulation; and (2) KRS Chapter 13A required: (a) an agency representative with authority to amend an administrative regulation to appear before the Subcommittee; and (b) deferral of an administrative regulation if an agency representative with authority to amend an administrative regulation did not attend the Subcommittee meeting.

Mr. Nicholas stated that: (1) technically, it would take the whole board to amend an administrative regulation; (2) while he had not asked board members to come with him to Subcommittee meetings in the past, he would ask them to begin coming if the Subcommittee wanted them to attend; (3) he believed his situation was similar to the Personnel Board, which was represented by Mr. Williams, except that instead of having one personnel board, he worked with seventeen different boards.

Chairman Arnold stated that someone from the Board was required to attend Subcommittee meetings in case a member had a question Mr. Nicholas was not able to answer.

In response to questions by Representative Lee, Mr. Nicholas stated that, while this administrative regulation should have been promulgated earlier: (1) he would accept responsibility for the delay; (2) the delay reflected the amount of work he had to complete in the promulgation of over 140 different administrative regulations in 17 different areas; (3) currently, he had a backlog of administrative regulations to promulgate; (4) the Board set the application fee established by statute at \$150; (4) while this administrative regulation dealt only with fees, 201 KAR 36:030 established requirements relating to continuing education; (5) this administrative regulation, 201 KAR 36:030, 201 KAR 36:040, and 201 KAR 36:050 were based on legislation originally enacted in 1996; (6) he believed that the: (a) statute gave guidance on its requirements; and (b) Board: 1. had followed the law; and 2. would continue to follow the law; (7) after the General Assembly created a new board, the Board was required to exist on agency receipts; and (8) because a board did not have agency receipts when it was first created, he was required to start the process before he could generate the money to accomplish its statutory directives.

Representative Lee stated that: (1) generally, a statute enacted by the General Assembly required the promulgation of administrative regulations; (2) if an agency waited two years to promulgate an administrative regulation, there would be a dis-service to the people of Kentucky; (3) this situation was not the first time in which the Subcommittee considered administrative regulations that related to statutes enacted two years earlier; and (4) the Subcommittee needed to: (a) have oversight on a particular piece of legislation if an administrative body did not timely promulgate an administrative regulation; and (b) require administrative bodies to explain to the Subcommittee why administrative regulations had not been timely promulgated.

Senator Roeding stated that the Subcommittee needed to ensure that something like this situation did not occur when future legislation was enacted concerning boards or agencies.

In response to questions by Subcommittee members, Subcommittee staff stated that: (1) in the past, administrative regulations had not always been promulgated in a timely manner; (2) the Subcommittee approved several letters at this meeting on this issue; (3) the renewal fee at issue in this administrative regulation would not have been imposed until this time period, regardless of when the administrative regulation had been promulgated; and (4) in some cases, agencies had waited one to four years to promulgate administrative regulations.

Chairman Arnold stated that the Subcommittee needed to try to prevent that situation from occurring in the future.

This administrative regulation was amended as follows: the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations.

201 KAR 36:030. Continuing education requirements. This administrative regulation was amended as follows: (1) Section 8 was amended to provide a certificate holder the right to a KRS Chapter 13B hearing upon the denial of continuing education credits; (2) Section 9(1) was amended to establish the hardships for which a time extension for earning credits would be granted; (3) Sections 1, 5, 8, and 9 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 through 10 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 36:040. Code of ethics. In response to questions by Representative Allen, Mr. Nicholas stated that: (1) typically, when the General Assembly enacted legislation that created a new licensure or certification board, the statute authorized a board to promulgate a code of ethics; and (2) the code of ethics was intended to inform a certificate holder of behavior that was considered ethical and non-ethical.

This administrative regulation was amended as follows: (1) Section 3 was amended to: (a) delete provisions that repeated KRS 335.540, as required by KRS 13A.120(2)(e) and (f); and (b) refer to the statute; (2) Sections 4, 5, and 6 were amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Sections 1, 2, 4, 5, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 36:050. Complaint management process. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 2, 3, 4, and 6 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

Kentucky Lottery Corporation

202 KAR 3:030. Retailer regulations. Camille Bathurst, General Counsel, Mike Denney, Attorney, and Bob Little, Vice President of Sales, represented the Corporation.

Subcommittee staff stated that: (1) the initial staff review: (a) stated that KRS 154A.400(1)(b) required that separate criteria be developed to govern the selection of retailers of instant tickets and on-line retailers; and (b) questioned whether this administrative regulation complied with that statute; and (2) this administrative regulation complied with the statute, because it established separate requirements for retailers of instant tickets and on-line retailers.

In response to a question by Senator Roeding, Ms. Bathurst stated that: (1) this administrative regulation: (a) originally established a \$25 fee for bi-annual licensure to cover the administrative costs associated with criminal background and credit checks; and (b) was amended to delete the \$25 fee after the public hearing because of complaints from a number of retailers; (2) the Corporation: (a) had not yet undergone a systematic re-licensing effort of its retailers; and (b) would begin re-licensing after this administrative regulation became effective; and (3) the other fees charged by the Corporation were established by administrative regulations that had been in effect since the Lottery's inception, or 1994.

In response to questions by Senator Roeding, Mr. Little stated that: (1) an applicant for a Kentucky lottery license was required to have a business licensed by the Revenue Cabinet with a federal identification number; (2) when a retailer applied, the Corporation: (a) took the application, including the names of the business owners; and (b) examined the application in a three-step process. The Corporation: 1. ran a credit report to ensure that the business' credit was okay; 2. ran a background check through the state police to make sure that individuals did not have a felony or criminal record in existence; and 3. checked with the Revenue Cabinet to determine whether the business' taxes had been paid; and (3) if an applicant

passed these checks, he would be approved as a licensed retailer.

In response to questions by Chairman Arnold, Mr. Little stated that: (1) the Corporation: (a) had guidelines governing how many retailers were necessary for Kentucky's lottery business; (b) currently had about 3,200 retailers; and (c) looked at one retailer per every 1,300 population; (2) retailers could be located across the street from each other; (3) this administrative regulation and the applicable statutes differentiated between an on-line retailer and an instant retailer; (4) the Corporation's contract with the on-line vendor based the contract payments on a set level of retailers or equipment; and (4) if there were enough on-line retailers to accommodate the population in a specified area, the Corporation would: (a) license the retailer for instant tickets; and (b) not license the retailer for on-line tickets.

In response to a question by Senator Roeding, Mr. Little stated that: (1) there was an appeal process; (2) the Corporation looked at a licensed retailer's instant ticket sales to determine if its traffic count would support an on-line license; and (3) if a business had \$1,000 a week in instant ticket sales, the business generally would generate enough business to make an on-line unit profitable in that location.

Ms. Bathurst stated that this administrative regulation provided a retailer remedy section that established a step-by-step process, including: (1) a retailer or applicant's right to protest; (2) the right to appeal to the Lottery Board; and (3) an appeal to the state court system.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to clearly establish the requirement that an applicant or retailer comply with the retailer regulations; and (4) Section 2 was amended to comply with the drafting requirements of KRS 13A.2251.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:090. Bow fishing. Roy Grimes, Wildlife Director; Tom Bennett, Commissioner; and Pete Pfeiffer, Director of Fisheries, represented the Department.

In response to a question by Chairman Arnold, Mr. Bennett stated that: (1) less than 500 people statewide engaged in bow fishing; and (2) the Department: (a) for some unknown reason, had previously: 1. allowed bow fishers to take catfish during the day; and 2. not previously allowed bow fishers to take catfish at night; and (b) had amended this administrative regulation to permit them to take catfish at night.

This administrative regulation was amended as follows: various sections were amended to comply with the drafting and formatting amendments of KRS Chapter 13A.

301 KAR 1:155. Commercial fishing requirements. 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) a new Section 6(3) was created to list the information to be included in commercial fishing report form.

Game

301 KAR 2:179. State park deer hunts. This administrative regulation was amended as follows: various sections were amended to comply with the drafting and formatting amendments of KRS Chapter 13A.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Tamela Biggs, staff attorney, represented the Department.

This administrative regulation was amended as follows: (1) KSP 06-01-01, E.3., was amended to delete a provision that repeated or summarized the statute; (2) KSP 06-01-01, F.1.c.(5), was amended to refer to KRS 197.025(1) which prohibits inmate access to records that would constitute a security threat; (3) KSP 19-04-01 was amended to provide that the Department request a safety inspection once a year; (4) KSP 22-04-01 was amended to incorporate by ref-

erence a project slip; and (5) drafting amendments to comply with KRS 13A.222(4).

501 KAR 6:110. Roederer Correctional Complex. In response to questions by Representative Bruce, Ms. Biggs stated that the amendment to this administrative regulation required an inmate to pay the replacement value for a lost or destroyed law book, because: (1) inmates had a tendency to lose or destroy books; and (2) whenever the Department caught an inmate destroying a law book, the inmate would be required to pay the replacement costs.

In response to questions by Senator Kafoglis, Ms. Biggs stated that: (1) she did not know the replacement costs of the books; (2) because the Department froze an inmate's account, if an inmate was given money, that money would be used to pay for the item; and (3) if an inmate was not given money, the Department would have a loss.

In response to Subcommittee members' requests, Ms. Biggs stated that she would: (1) find out the replacement costs of the books; and (2) inform the Subcommittee at its next meeting.

This administrative regulation was amended as follows: (1) RCC 21-01-01, L.5.a., was amended to provide that an inmate would have to pay "replacement value" for a lost law book; and (2) drafting amendments to comply with KRS 13A.222(4).

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. Charlie Harman, staff assistant, and Steven Williams, Director of Professional Services, represented the Cabinet.

In response to questions by Chairman Arnold, Mr. Harman stated that, while the Cabinet had an established process that was approved in 1994 for the consultant selection process, House Bill 391, enacted by the General Assembly during its 1998 Regular Session, made changes to the selection of consultants.

In response to questions by Chairman Arnold, Mr. Williams stated that: (1) the Cabinet had a Selection Committee for each project or group of projects; (2) the Selection Committee consisted of the following members: (a) one member randomly selected from the governor's pool of three individuals appointed by the governor; (b) two members randomly selected from the secretary's pool of six individuals; and (c) two User Division representatives who: 1. worked in that particular area (usually highway design projects); and 2. would include: a. one person from the district in which the project was located; and b. one person from the central office division (which was typically the Division of Highway Design); and (3) it did take a long time to complete the procurement process.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 3 were amended to: (a) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (b) correct the title and edition dates of the material incorporated by reference.

600 KAR 6:060. Professional engineering service selection committee. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph and Section 2 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to delete language that summarized or repeated existing statutory provisions, as required by KRS 13A.120(2)(e) and (f); (4) Sections 1 through 3 were amended to: (a) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (b) correct the title and edition dates of the material incorporated by reference; and (5) two of the forms incorporated by reference were amended to conform to the provisions of the administrative regulation.

600 KAR 6:080. Financial records and audits of firms. This administrative regulation was amended as follows: (1) the NECES-

SITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Education Professional Standards Board

704 KAR 20:305. Written examination prerequisites for teacher certification. Patricia Hartanowicz, Assessment and Research Consultant, and Rita Osborne, Director of Testing and Internship, represented the Board.

This administrative regulation was amended as follows: (1) Section 2 was amended to change references from September 30, 1998, and October 1, 1998, to the effective date of the administrative regulation, as required by KRS 13A.100, 13A.120(6), 13A.130, and 13A.330; (2) amend Section 10 to delete a reference to the core battery examinations, consistent with the amendments originally made to this administrative regulation; and (3) Sections 2 and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services. George Parsons and Sue Simon, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for the Blind

782 KAR 1:030. Scope and nature of services. Sue Simon, General Counsel, and Jeanne Pherson, program policy adviser, represented the Department.

In response to questions by Senator Roeding, Ms. Pherson stated that: (1) the independent living services program established by the Department provided services: (a) for elderly and blind individuals; and (b) the services were different than the services provided for vocationally-employed individuals; (2) because private institutions generally charged two-thirds more than public institutions, the Department: (a) paid the public institution rate; and (b) allowed individuals to attend private institutions, if the individual paid the difference in tuition; and (3) the Department would pay an individual's out-of-state travel expenses, if the program was not offered in Kentucky.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8, 10 through 12, and 14 through 18 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Kentucky Assistive Technology Loan Corporation

789 KAR 1:010. General eligibility criteria for assistive technology loans. George Parsons and Dave Matheis, Cabinet secretary designee on the Board of Directors, represented the Department.

In response to questions by Senator Roeding, Mr. Matheis stated that: (1) the assistive technology loan program was: (a) established by statute (KRS 151B.450 to 151B.475); (b) governed by a Board of Directors; and (c) designed to guarantee loans through banks for individuals with disabilities who might not be able to: 1. qualify for conventional loans; or 2. finance needed purchases; (2) while KRS 151B.455 required that at least four of the seven members of the Board of Directors have a disability, currently five of the

seven members have disabilities; and (3) the loans enabled individuals to purchase assistive technology devices, including: (a) a computer with adaptive devices; (b) a van with modifications; and (c) a wheelchair with modifications.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1(2) were amended to correct statutory citations; (2) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) a new Section 10 was created to specify the requirements for a qualified lender.

Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:131. Repeal of 806 KAR 3:130. Sharron Burton, Counsel, represented the Department.

In response to a question by Chairman Arnold, Ms. Burton stated that this administrative regulation repealed 806 KAR 3:130, because the statute that authorized 806 KAR 3:130 had been repealed by the General Assembly during its 1998 Regular Session.

This administrative regulation was amended as follows: the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations.

Motor Vehicle Repairs (No-fault)

806 KAR 39:081. Repeal of 806 KAR 39:080. In response to a question by Chairman Arnold, Ms. Burton stated that this administrative regulation repealed 806 KAR 39:080, because the statute that authorized that administrative regulation had been repealed by the General Assembly during its 1998 Regular Session.

This administrative regulation was amended as follows: the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions. Rena Strevels, Executive Secretary Senior; Bernie Hettel, Executive Director; and Frank Jones represented the Commission.

This administrative regulation was amended as follows: Section 1, Definitions, was amended to make it clear that the stakes races in North America were exempted from the definition of "stakes races".

810 KAR 1:015. Claiming races. This administrative regulation was amended as follows: various sections were amended to comply with the drafting and formatting requirements of KRS Chapter 13A.

810 KAR 1:016. Running of the race. This administrative regulation was amended as follows: various sections were amended to: (1) comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) clarify requirements.

Harness Racing

811 KAR 1:090. Stimulants and drugs. This administrative regulation was amended as follows: various sections were amended to: (1) comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) incorporate by reference two forms.

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. Karen Doyle, Commissioner's Office, and Jesse Williams, Policy Analyst, represented the Department.

In response to questions by Senator Roeding, Ms. Doyle stated that: (1) this administrative regulation was promulgated as an emergency because this administrative regulation: (a) went hand in hand with the Kentucky Children's Health Initiative Program; (b) needed to be implemented by the Department to cover the Medicaid provision of the notch children; and (c) was authorized by a statute enacted during the 98 Regular Session (1998 Senate Bill 128) which contained an emergency clause; and (2) the two administrative regulations that corresponded with this administrative regulation were promulgated as emergency administrative regulations for the same reason.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 1 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:011 & E. Technical eligibility requirements. In response to questions by Senator Roeding, Mr. Williams stated that a woman would remain eligible for Medicaid even if the child born to her was the second or third child born out of wedlock.

Senator Roeding stated that some states had promulgated administrative regulations that: (1) limited Medicaid eligibility to the first child; and (2) had helped reduce the number of pregnancies.

In response to questions by Senator Roeding, Ms. Doyle stated that this administrative regulation referenced the Kentucky Medicaid Managed Behavioral Care Organization, because: (1) the reference would be needed once the program had been fully implemented; (2) it would take eight or nine months to promulgate an ordinary administrative regulation; and (3) the Department could not promulgate an emergency administrative regulation to reference the program.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 8 and 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:595. Model Waiver II services and payments. Pam Aldridge, Manager of Community Based Services, Diane Chism, nurse consultant inspector, and Karen Doyle, Commissioner's Office, represented the Department.

In response to questions by Senator Roeding, Ms. Aldridge stated that: (1) the traditional institutionalized cost for ventilator care was: (a) a set fee for the service; and (b) based on historical costs, which was from: 1. cost report data submitted by providers to the Department; and 2. data showing what the Department had historically paid to providers for the service; (2) this administrative regulation: (a) provided for in-home ventilator services only; (b) based the cost of the services on the Department's traditional costs in an institutional setting; and (c) prohibited the cost of the in-home services from exceeding the cost of institutional services; and (3) the in-home service provisions were implemented in the hope that in-home services would be less costly than institutional care.

This administrative regulation was amended as follows: the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to delete language that summarized or repeated statutes, as required by KRS 13A.120(2)(e) and (f); and (3) Sections 1, 2, 4, 5, 6, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:605 & E. Medicaid procedures for determining initial and continuing eligibility. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1, 2, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:640 & E. Income standards for Medicaid. Karen Doyle, Commissioner's Office, and Jesse Williams, Policy Analyst, represented the Department.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:645 & E. Resource standards for Medicaid. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Payment and Services

907 KAR 3:030 & E. Coverage and payments for Impact Plus services. Karen Doyle, Commissioner's Office, and Betty Weaver, Children Special Services branch, represented the Department.

In response to a question by Senator Roeding relating to the Regulatory Impact Analysis, Ms. Weaver stated that: (1) the Department had not stated that this administrative regulation would

save any money; and (2) the cost savings should have been neutral.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 3 were amended to correct statutory citations; (2) Section 3 was amended to specify what services shall be covered as a targeted case management service; and (3) Sections 1 and 3 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Personnel Board: Board

101 KAR 1:325. Probationary periods. Hanson Williams, executive director, represented the Board.

Board of Examiners of Psychologists

201 KAR 26:215. Nonresident status.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:201. Fishing limits. Roy Grimes, Wildlife Director; Tom Bennett, Commissioner; and Pete Pfeiffer, Director of Fisheries, represented the Department.

In response to a question by Senator Roeding, Mr. Bennett stated that bag and creel limits related to size and number.

Department of Agriculture: Division of Animal Health: Livestock Sanitation

302 KAR 20:040 & E. Entry into Kentucky. Mark Farrow, Chief of Staff and General Counsel, and Rusty Ford, staff assistant, represented the Department.

In response to a question by Chairman Arnold, Mr. Farrow stated that this administrative regulation governed the entry of livestock into Kentucky.

In response to questions by Senator Pendleton, Mr. Farrow stated that: (1) Representative Collins had a problem in his area of Johnson County with horse sales at the livestock markets in which a number of horses were coming in from other states without the proper paperwork; (2) the Department's entry requirements were so strict that the horses were required to return to the state from which they came, because they did not have the proper papers; (3) this administrative regulation: (a) allowed the animal to come into Kentucky, if the testing had been done within a specified period of time; (b) governed horses, mules, and any type of equidae that came through the livestock market; and (c) did not govern thoroughbreds or other animals that did not go through the livestock market; (4) according to Representative Collins and others, it had cost a considerable amount of money to return the horses, because the livestock sales were often held once or twice a week; and (5) the Department: (a) met with representatives of the horse industry to find a solution to the problem; and (b) believed everyone had agreed that this was the proper method to go about resolving the problem.

In response to questions by Senator Pendleton, Mr. Ford stated that: (1) this administrative regulation: (a) addressed a disease that was: 1. caused by a specific virus; 2. known as equine infectious anemia; and 3. had been declining dramatically in its prevalence rate over the last five years; and (b) established a procedure to treat equine from neighboring states in the same manner as the equine in Kentucky were treated; and (2) the virus: (a) was not expected under normal circumstances to transmit rapidly; and (b) required repeated biting from a mosquito to be transmitted.

Mr. Farrow stated that this disease was: (1) a mosquito-born disease; and (2) not passed through nominal contact between the animals.

In response to questions by Representative Allen, Mr. Farrow stated that: (1) the horses governed by this administrative regulation: (a) were required to come from an approved out-of-state horse sale; and (b) would have documentation showing their state of origin; (2) while the Department did not have the manpower to patrol every inch of Kentucky's border, if a horse came to a horse sale or livestock market, the Department did have inspectors at all of those

markets to catch them; and (3) it was difficult for the Department to: (a) catch all of the livestock that came into Kentucky; and (b) supervise all the highways and entry points into Kentucky.

Justice Cabinet: Department of Corrections: Execution Hearings

501 KAR 8:011. Repeal of 501 KAR 8:010. Tamela Biggs, staff attorney, represented the Cabinet.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:009. Jockeys and apprentices. Rena Strevels, Executive Secretary Senior; Bernie Hettel, Executive Director; and Frank Jones represented the Commission.

Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the October, 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.

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.

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: 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.

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: 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.

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 for Employment Services: Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate.

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.

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.

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.

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.

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.

Cabinet for Health Services: Department for Medicaid Services:

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Division of Administration and Development: Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.

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

907 KAR 1:026E. 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 1:626E. Reimbursement of dental services.

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:

(1) Fluoroscopy Policy

Subcommittee staff stated that the members had been given an informational copy of a letter notifying them that the Cabinet: (1) had rescinded a policy letter that was directed at chiropractors; (2) realized that the policy on fluoroscopy should: (a) relate to all relevant professions; and (b) was required by KRS Chapter 13A to be set out, or incorporated by reference, in an administrative regulation; and (3) had met with Subcommittee staff; and (4) would meet to amend 902 KAR 100:125 to establish the policy relating to fluoroscopy.

(2) House Bill 564: Exemption from Continuing Education Requirements promulgated by the Real Estate Commission

Subcommittee staff stated that: (1) it appeared that the Real Estate Commission may have had a policy implementing House Bill 564, relating to continuing education, that was not set out, or incorporated by reference, in an administrative regulation; and (2) at the request of Subcommittee members, Subcommittee staff had drafted a letter for the Subcommittee's approval that requested the Real Estate Commission to appear at the next Subcommittee meeting, to discuss with the Subcommittee: (a) whether the Commission had a policy; (b) whether the policy was still in effect; (c) why the policy had not been promulgated in an administrative regulation; and (d) how the Commission intended to comply with the requirements of KRS Chapter 13A.

The Subcommittee unanimously approved the Subcommittee request to the Commission by motion by Representative Lee, seconded by Representative Bruce.

(3) House Bill 106 and Amendment of 601 KAR 14:010, Headgear and eye-protective devices

Subcommittee staff stated that, pursuant to instructions, Subcommittee staff had drafted a letter for the Subcommittee's approval to send to the Transportation Cabinet, that: (1) advised the Cabinet that the wording of House Bill 106 exempted passengers over 21 and out-of-state drivers from the helmet requirements; (2) attached a suggested draft of the required amendments to this administrative regulation; and (3) requesting that Cabinet personnel appear before the Subcommittee at its next meeting.

The Subcommittee unanimously approved the Subcommittee request to the Cabinet by motion by Representative Lee, seconded

by Representative Bruce, to send the Commission a letter.

(4) Request from Representative Coleman relating to House Bill 285, determination of death by paramedics

Subcommittee staff stated that: (1) a request had been received from Representative Coleman relating to House Bill 285, that related to the: (a) determination of death by: 1. paramedics; and 2. the Board of Nursing; and (b) development of relevant forms by the Cabinet for Health Services; and (2) Representative Coleman had requested that the Subcommittee request that the Cabinet and the two boards: (a) appear before the Subcommittee; and (b) discuss: 1. why administrative regulations implementing House Bill 285 had not been promulgated; and 2. explain their plans for compliance with the requirements of KRS Chapter 13A.

The Subcommittee unanimously approved the Subcommittee request to the Cabinet and the Boards of Medical Licensure and Nursing by motion by Representative Lee, seconded by Representative Bruce.

(5) Contracts and contract exclusions, restrictions on bidding

The Subcommittee unanimously approved a motion by Representative Lee, seconded by Senator Kafoglis, to request the Finance and Administration Cabinet to appear before the Subcommittee to discuss the basis for sixty (60) mile radius contract restrictions relating to the repair or provision of radio equipment material.

The Subcommittee adjourned at 12 noon until October 13, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 19, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of August 19, 1998, having been referred to the Committee on August 7, 1998, pursuant to KRS 13A.290(6):

902 KAR 8:040
902 KAR 8:060
902 KAR 8:070
902 KAR 8:080
902 KAR 8:090
902 KAR 8:100
902 KAR 8:110
902 KAR 8:120
902 KAR 8:130
902 KAR 8:140

Senator Westwood said the portion of the Staff Review Form for 902 KAR 8:090, title "Brief Summary of Regulatory Impact Analysis" stated that the administrative regulation related to all local health departments but Louisville-Jefferson County, Northern Kentucky District or the Lexington-Fayette County Health Departments and asked why these three areas were treated differently? Bob Nelson, Manager, Local Personnel Branch, Department for Public Health, Cabinet for Health Services, said KRS Chapter 212 established each type of health department across the state and the regulations before the committee related to all health departments with the exception of the three mentioned. He said each of those health departments have their own statutes and authorization to provide a personnel program.

There being no further discussion or questions about the remaining Administrative Regulations, a motion to approve all the regulations was made by Representative Nunn, seconded by Senator Herron, and approved by voice vote.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 19, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of September 1, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of September 1, 1998, having been referred to the Committee on August 7, 1998, pursuant to KRS 13A.290(6): 601 KAR 2:020.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 1, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of September 3, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of September 3, 1998, having been referred to the Committee on August 7, 1998, pursuant to KRS 13A.290(6):

781 KAR 1:061
704 KAR 20:690
772 KAR 1:010
772 KAR 1:020
772 KAR 1:030
772 KAR 1:040
772 KAR 1:050
772 KAR 1:060
772 KAR 1:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 3, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates D2

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 D10

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 D15

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.

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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)			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
ORDINARY ADMINISTRATIVE REGULATIONS:					
13 KAR 2:045					
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Amended	2705	(See Volume 25)			

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401 KAR 63:100			501 KAR 6:080		
Amended	1770	6-10-98	Amended	2152	7-13-98
401 KAR 63:104	1798	6-10-98	600 KAR 6:050		
401 KAR 63:541	1800	6-10-98	Amended	2760	(See Volume 25)
401 KAR 63:560	1801	6-10-98	600 KAR 6:060		
401 KAR 63:640	1803		Amended	2762	(See Volume 25)
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		
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405 KAR 16:001			Amended	2433	(See Volume 25)
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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
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405 KAR 18:001			Amended	2166	
Amended	725		As Amended	2681	6-16-98
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405 KAR 18:060			Amended	2169	
Amended	732		As Amended	2684	6-16-98
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405 KAR 18:090			Amended	1771	
Amended	738		Amended	2124	
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405 KAR 18:100			806 KAR 6:100	2248	
Amended	741		Amended	2719	6-25-98
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405 KAR 18:160			As Amended	2689	6-16-98
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501 KAR 1:030			Amended	2174	(See Volume 25)
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501 KAR 6:020			Amended	2176	(See Volume 25)
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			Amended	2177	(See Volume 25)

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808 KAR 10:110			Amended	2460	7-13-98
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Amended	2728	(See Volume 25)	Amended	2463	7-13-98
808 KAR 10:130			815 KAR 20:120		
Amended	2180	(See Volume 25)	Amended	2465	7-13-98
808 KAR 10:141	2262	(See Volume 25)	902 KAR 8:040		
808 KAR 10:150			Amended	2192	(See Volume 25)
Amended	2181	(See Volume 25)	902 KAR 8:060		
808 KAR 10:160			Amended	2194	(See Volume 25)
Amended	2182	(See Volume 25)	902 KAR 8:070		
808 KAR 10:170			Amended	2197	(See Volume 25)
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808 KAR 10:200			Amended	2200	(See Volume 25)
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808 KAR 10:210			Amended	2204	(See Volume 25)
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808 KAR 10:225			Amended	2206	(See Volume 25)
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808 KAR 10:240			Amended	2208	(See Volume 25)
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808 KAR 10:260			Amended	2210	(See Volume 25)
Amended	2190	(See Volume 25)	902 KAR 8:130		
808 KAR 10:300			Amended	2215	(See Volume 25)
Amended	2191	(See Volume 25)	902 KAR 8:140		
808 KAR 10:310	2263	(See Volume 25)	Amended	2216	(See Volume 25)
808 KAR 10:320	2264	(See Volume 25)	902 KAR 20:026		
808 KAR 10:330	2265	(See Volume 25)	Amended	2218	(See Volume 25)
808 KAR 10:340	2266	(See Volume 25)	902 KAR 20:048		
808 KAR 10:350	2268	(See Volume 25)	Amended	2226	(See Volume 25)
808 KAR 10:360	2269	(See Volume 25)	902 KAR 20:051		
808 KAR 10:370	2270	(See Volume 25)	Amended	2233	(See Volume 25)
808 KAR 10:380	2271	(See Volume 25)	902 KAR 20:180		
808 KAR 10:390	2273	(See Volume 25)	Amended	1962	
810 KAR 1:001			As Amended	2401	(See Volume 25)
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810 KAR 1:009			Amended	1573	
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810 KAR 1:015			Amended	1575	
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810 KAR 1:018			Amended	2770	(See Volume 25)
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811 KAR 1:090			908 KAR 2:190	2043	
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VOLUME 25					
EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)			904 KAR 2:380E	44	6-15-98
			904 KAR 2:490E	283	6-22-98
			907 KAR 1:025E	285	6-30-98
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